

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

BRYAN BACON,	:	O P I N I O N
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2011-T-0026
DEANNA ROMO,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2010 CV 149.

Judgment: Affirmed.

Bryan Bacon, pro se, 386 Wintergreen Drive, Brookfield, OH 44403 (Plaintiff-Appellant).

Deanna Romo, pro se, 8049 Thompson-Sharpville Road, Masury, OH 44403-9751 (Defendant-Appellee).

THOMAS R. WRIGHT, J.

{¶1} This accelerated-calendar appeal is from a final order of the Trumbull County Court of Common Pleas, in which an award of an arbitrator was confirmed and judgment was entered in favor of appellee, Deanna Romo, on all pending claims in the action. Appellant, Bryan Bacon, primarily contests the factual findings of the arbitrator, arguing that they are against the manifest weight of the evidence.

{¶2} The underlying litigation pertained to the ownership of real property that the parties acquired while they were living together in February 2007. According to the

allegations in appellant's complaint, even though he and appellee divided the expenses for the property equally between them, only her name was on the mortgage and deed. Despite this, when the parties' relationship ended approximately fifteen months later, appellee moved from the home and allowed him to retain sole possession. Appellant also alleged that, thereafter, the parties executed an agreement providing that appellee would transfer her interest in the property to him for a certain sum, once he was able to obtain new financing.

{¶3} In his complaint, appellant sought title to the property on the grounds that appellee had breached their agreement. Alternatively, he sought damages covering the expenses he had incurred in making improvements to the residence.

{¶4} Appellee answered the complaint and asserted two counterclaims against appellant. First, she requested a writ of restitution to remove him from the property on the basis that he had breached their agreement by failing to make the required monthly payments under the existing mortgage. Second, she sought damages for the payments she had to make to settle a separate foreclosure proceeding concerning the property.

{¶5} Once the initial pleadings were filed, the trial court ordered the entire case to compulsory arbitration. After conducting an evidentiary hearing, the arbitrator issued his final report and award. As to appellant's claims, the arbitrator concluded that he was not entitled to ownership of the real property because he had never satisfied the terms of the agreement requiring him to obtain separate financing. The arbitrator further held that appellant failed to demonstrate he had a reasonable expectation that he would be compensated for the improvements. As to appellee's claims, the report concluded that, despite the terms of their agreement, appellant defaulted on the existing mortgage, thereby requiring appellee to make the payments. As a result, the arbitrator ordered the

dismissal of appellant's two claims, granted appellee a writ of restitution, and awarded her the sum of \$8,905.80.

{¶6} Within thirty days of the release of the arbitrator's report, appellant moved the trial court for reconsideration of the entire case. In essence, the motion cited three factual issues which, according to appellant, should have been determined differently, thereby changing the arbitrator's final decision on the merits.

{¶7} After appellee submitted a response, the trial court rendered its final order on February 17, 2011. As to the motion for reconsideration, the trial court held that the substance of the motion was not properly before it because appellant never submitted a timely appeal of the report, as required under the Local Rules of the Trumbull County Court of Common Pleas. Regarding the report itself, the court found that the arbitrator had addressed all pending issues and claims in the action. Consequently, the trial court confirmed the report and entered final judgment consistent with the arbitrator's award.

{¶8} In appealing the foregoing decision to this court, appellant has raised two assignments of error for consideration:

{¶9} “[1.] The trial court committed prejudicial error in granting defendant Deanna Romo appellee Bryan Bacon's, motion for summary judgment based upon its opinion that did not consider certain facts and evidence in weighing the crucial case in the quiet title action.

{¶10} “[2.] The trial court committed prejudicial error where the arbitrator determined that plaintiff breached the agreement to sell real estate and did not consider facts as significant weight.”

{¶11} Although not expressly stated in the exact wording of the assignments, our review of appellant's brief indicates that he has asserted three questions regarding the

manifest weight of the evidence before the arbitrator. First, he maintains that he did not breach the agreement he had with appellee because it was never demonstrated that he had agreed to make the mortgage payments. Second, he states that appellee breached their agreement because his evidence showed that she attempted to change the sum he had to pay in exchange for the property. Third, he challenges the arbitrator's finding that he had no legitimate expectation that he would be reimbursed for the improvements to the residence. Additionally, as a separate point, appellant further contends that the procedure employed at the trial level resulted in a denial of his right to a jury trial.

{¶12} Upon reviewing the substance of the appealed judgment, this court holds that the foregoing "manifest weight" arguments are not properly before us in this appeal. Specifically, we would emphasize that the trial court never addressed the actual merits of the arbitrator's decision and whether it was supported by the evidence. Instead, the trial court's ruling to uphold the arbitrator's report was predicated solely upon the finding that appellant had failed to file a timely notice of appeal in regard to that report.

{¶13} In originally ordering that the underlying case be submitted to compulsory arbitration, the trial court was acting pursuant to Loc.R. 13 of the Trumbull County Court of Common Pleas. Our review of that rule's various provisions indicates that it permits a common pleas judge to order arbitration for any civil case in which, inter alia, the right to a jury trial would exist and the total amount in controversy is \$20,000 or less. See Loc.R. 13.02. In relation to the nature of the arbitration proceeding, Loc.R. 13.03 states that a court-ordered arbitration, although compulsory, is not considered binding unless both parties execute a form in which the right of de novo review before the trial court is expressly waived.

{¶14} In the present case, the parties did not execute a waiver of the basic right

to de novo review of the arbitrator's decision. Accordingly, appellant was entitled to the de novo review recognized under the Trumbull County local rule, so long as he met any applicable requirements.

{¶15} As to the nature of the de novo review, Loc.R. 13 specifically provides for a direct appeal from the arbitrator's award to the common pleas court. Under Loc.R. 13.17, any party has a "right" to pursue an appeal so long as he complies with certain conditions within thirty days of the filing of the award. These conditions, as set forth in Loc.R. 13.18, include the express requirement that the party must file a notice of appeal with the clerk of courts.

{¶16} Once a party has properly invoked the right to appeal the arbitrator's final award, the ensuing proceeding before the court itself is governed by Loc.R. 13.20:

{¶17} "A) Upon the filing of the notice of appeal and the payment or waiver of the costs as hereinbefore provided, the Assignment Commissioner shall cause the case to be returned to the assigned judge for trial.

{¶18} "B) All cases which have been appealed shall be tried de novo by the assigned judge."

{¶19} Pursuant to the foregoing provisions, notwithstanding the fact that the new proceeding before the common pleas judge is labeled as an "appeal" of the arbitrator's award, the trial judge does not engage in any "review" of the evidence presented during the arbitration. Rather, the entire case must be tried again de novo before either a jury or the bench. In this regard, this court would emphasize that the Trumbull County local rule does not give the trial judge any discretion in determining whether a de novo trial is warranted in a given case; i.e., if the notice of appeal is filed within thirty days and all other requirements are met, a new trial must always be held.

{¶20} In this case, a review of the trial record readily shows that appellant never satisfied the requirement of filing a timely notice of appeal from the arbitrator's award. Instead, he only filed a motion for reconsideration, a submission which is not recognized under the Trumbull County local rule. Furthermore, in that motion, appellant only tried to argue that the arbitrator's findings were against the manifest weight of the evidence. Given that the Trumbull County local rule does not provide for a procedure in which the common pleas judge engages in a form of appellate review of an arbitration award, the trial court properly overruled appellant's motion.

{¶21} In the absence of a proper notice of appeal, the trial court limited its review of the arbitration award to determining whether the arbitrator had resolved all pending claims in the action. Before this court, appellant has not raised any specific challenge to the trial court's application of the local rule or its limited analysis of the propriety of the arbitration award. Furthermore, our review of the trial record does not reveal any plain error in the trial court's disposition of the matter.

{¶22} Simply stated, the Trumbull County local rule for compulsory arbitration only allows for one potential remedy following the issuance of an arbitration award, and appellant failed to properly invoke that remedy through the submission of a timely notice of appeal. In addition, even if appellant had captioned his motion for reconsideration as a notice of appeal, the arguments he sought to raise, i.e., contesting the manifest weight of the evidence, were not appropriate in light of the fact that the local rule mandates a de novo trial before the trial judge. Under such circumstances, the trial court did not err in refusing to address appellant's arguments and confirming the arbitrator's decision as to all pending claims in the case.

{¶23} As a separate contention under both of his assignments, appellant asserts

that the underlying action should never have been submitted to arbitration because his complaint contained a request for a jury trial. As to this point, this court would reiterate that if appellant had filed a timely notice of appeal in compliance with the local rule, the trial court would have been obligated to afford him a jury trial. To this extent, the denial of his right to a jury trial was not due to the enforcement of the local “arbitration” rule, but was instead due solely to appellant’s failure to research the rule and comply with its requirements.

{¶24} Given that appellant’s “manifest weight” arguments could not be reviewed by the trial court in a post-arbitration proceeding under Loc.R. 13 of the Trumbull County Court of Common Pleas, logic dictates that such arguments cannot be raised before this court as a valid basis for reversing the confirmation of the arbitrator’s award. Therefore, since appellant has failed to establish any error in the trial court’s ruling on his motion for reconsideration, both of his assignments of error are without merit. It is the judgment and order of this court that the judgment of the trial court is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.