[Cite as *Cecchini v. Cecchini*, 2014-Ohio-4485.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	FIFTH JUDICIAL DISTRICT
COUNTY OF STARK	)	

JENNIFER CECCHINI Appellant/Cross-Appellee v. GAETANO CECCHINI Appellee/Cross-Appellant	C.A. Nos. 2012 CA 00125 2012 CA 00222 2013 CA 00022 2013 CA 00120 2013 CA 00229 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF STARK, OHIO CASE No. 2010 DR 00063

DECISION AND JOURNAL ENTRY

Dated: September 22, 2014

WHITMORE, Judge.

{¶1} Appellant, Jennifer Cecchini, appeals decisions of the Stark County Court of Common Pleas, Domestic Relations Division, that confirmed the arbitration award that resulted in her divorce decree and that denied her motions to vacate or modify the arbitration award. She also appeals post-decree orders related to contempt and execution of the property division. This Court affirms in part and reverses in part.

I.

{¶2} Jennifer and Gaetano Cecchini married in 1994 and are the parents of three children, two of whom have now reached the age of majority. In 2010, Ms. Cecchini filed a complaint for divorce. The parties entered into a shared parenting plan with respect to the allocation of parental rights and responsibilities, but the financial issues between them proceeded

to trial. In October 2011, however, the parties entered into an agreement to submit the issues of property distribution, spousal support, and child support to arbitration in lieu of continuing with the trial. They did not file a copy of the arbitration agreement, nor did they file any motion with the trial court requesting a referral to arbitration. Nonetheless, the parties and their respective attorneys actively participated in the arbitration process over the course of several months, and the docket does not reflect any further involvement by the trial court while the process moved forward.

{¶3} The arbitrator rendered an award and filed it under seal with clerk of courts on March 28, 2012. Shortly thereafter, Mr. Cecchini moved to confirm the arbitration award; Ms. Cecchini opposed the motion and requested a stay of the confirmation proceedings. The trial court, however, entered a divorce decree consistent with the award. Three months after the award was filed, Ms. Cecchini moved to vacate the award on substantive and procedural grounds, arguing that the arbitration process was flawed, that the trial court failed to exercise the necessary level of supervision over the proceedings, and that the substance of the award was contrary to law. The trial court denied her motions. Ms. Cecchini appealed the trial court's orders confirming the award, entering judgment consistent with the award, and denying her motions to vacate.

{¶4} This Court consolidated all of the appeals that were ready for oral argument. For ease of disposition, the arbitration appeals are addressed first, and Ms. Cecchini's assignments of error have been rearranged.

II.

Assignment of Error Number Three

THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY

CONFIRMING AND ADOPTING THE "CECCHINI ARBITRATION" WHEN THE SUPREME COURT HAS NOT APPROVED OF ARBITRATION IN DIVORCE CASES GENERALLY.

{¶5} Ms. Cecchini's third assignment of error argues that Ohio law does not recognize arbitration as an option in domestic cases and, therefore, that the trial court should have refused to confirm the arbitration award. We disagree.

{¶6} Although R.C. Chapter 2711 does not reference domestic cases specifically, its terms encompass any situation in which parties agree to submit disputes arising out of a contract requiring arbitration or circumstances in which the parties agree to arbitrate existing disputes or disputes that will arise later out of their relationship. *See* R.C. 2711.01(A). With this backdrop, the Supreme Court of Ohio has recognized that when couples enter into a prenuptial agreement that provides for arbitration of child support and spousal support, the arbitration clause is enforceable later as provided in R.C. Chapter 2711. *Kelm v. Kelm*, 68 Ohio St.3d 26 (1993), paragraph one of the syllabus. Noting that "[a]rbitration, as a method of alternative dispute resolution, has long been favored in the law[,]" the Supreme Court concluded broadly that "we see no reason why agreements to arbitrate should not be included in the area of domestic relations." *Id*. at 27, 29. The Court therefore concluded that the arbitration clause in the prenuptial agreement at issue in *Kelm* was enforceable and construed it broadly to apply to permanent and temporary matters related to child and spousal support – the subjects to which the arbitration clause pertained. *Id*. at 27-28.

{¶7} Having recognized that couples may agree to arbitrate domestic disputes *before* they marry through a prenuptial agreement, the Supreme Court has also recognized that the parties to an action for divorce or dissolution may jointly request arbitration during the course of domestic litigation by promulgating Sup.R. 15(B), which permits the arbitration of domestic

cases "at the request of all parties," subject to the procedures set forth in the rule. Sup.R. 15(B)(1).

{¶8} The Ohio Supreme Court has recognized that arbitration may be appropriate in domestic cases either as a result of an arbitration clause in a prenuptial agreement or by virtue of the parties' agreement to arbitrate an ongoing domestic case in accordance with Sup.R. 15(B). This recognition – coupled with the broad language of *Kelm* – indicates that the Supreme Court has indeed recognized that arbitration is viable in the field of domestic relations. Ms. Cecchini's third assignment of error is overruled.

Assignment of Error Number Two

> THE TRIAL COURT ERRED AS [A] MATTER OF LAW TO THE PREJUDICE OF APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, AND DENIED HER DUE PROCESS BY A) FAILING TO ENTER AN ORDER REFERRING HER DIVORCE TO ARBITRATION, THEREBY DENYING HER THE RIGHT OF APPELL[ATE] REVIEW PURSUANT TO R.C. § 2711.02(C); B) FAILING TO REVIEW ANY ARBITRATION AGREEMENT IN ADVANCE OF ARBITRATION TO DETERMINE WHAT ISSUES WOULD BE ARBITRATED, WHETHER THE ISSUES WERE ACTUALLY ARBITRABLE AND WHAT ISSUES REMAINED FOR THE COURT'S DETERMINATION; AND C) ABDICATING ITS STATUTORY AUTHORITY.

Assignment of Error Number Four

> THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF THE APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY ALLOWING A PROCESS WHICH IS NOT AUTHORIZED BY THE OHIO REVISED CODE OR COURT RULES.

{¶9} Ms. Cecchini's second and fourth assignments of error appear to argue that the trial court erred by following a procedure that was not authorized by either R.C. Chapter 2711 or Sup.R. 15(B). We agree.

{¶10} As the parties in this case have acknowledged, the posture of this matter does not fit squarely within the framework established by R.C. Chapter 2711. Specifically, the face of the

Arbitration Act contemplates cases in which there is an arbitration agreement in existence before the controversy arises. In such cases, R.C. 2711 comes into play when one party commences litigation, but the other party maintains that the case should fall under the arbitration clause instead. As noted above, the Ohio Supreme Court approved of this type of arbitration in domestic relations cases in *Kelm*, 68 Ohio St.3d 26. In that case, the Court recognized the validity of an arbitration clause contained within a prenuptial agreement for purposes of R.C. Chapter 2711. Consequently, the trial court permitted some issues in that case to proceed before an arbitrator in lieu of a trial to the domestic relations court in the pending case. Although the Court's statements approving of domestic relations arbitration were broad, the procedural issue in *Kelm*was narrow and fell well within the framework of R.C. Chapter 2711. In other words, the parties to the case were also parties to a contract entered into before their marriage. That contract set forth an arbitration clause that provided for arbitration of certain issues in the event that the marriage relationship ended. Consistent with the parties' agreement, and with R.C. 2711, the Supreme Court recognized the validity of that clause and held that the parties could be bound by its terms.

{¶11} Sup.R. 15(B) addresses domestic relations arbitration from a different procedural perspective. Under Sup.R. 15(B), domestic relations cases may be referred to arbitration upon agreement of the parties after a case has been filed without respect to whether there is a prenuptial agreement requiring arbitration. *See* Sup.R. 15(B)(1). Sup.R. 15(B) does not require a local rule regarding arbitration of domestic cases in these circumstances. *Compare* Sup.R. 15(A) (a local rule that conforms to Sup.R. 15(A) is required when a court of common pleas establishes a program of mandatory arbitration of civil cases within a defined monetary

threshold). Nonetheless, Sup.R. 15(B)(1)-(3) does set forth a procedure to be followed when domestic cases are arbitrated by agreement of the parties:

> (1) The judge or judges of a division of a court of common pleas having domestic relations or juvenile jurisdiction may, at the request of all parties, refer a case or a designated issue to arbitration.
>
> (2) The parties shall propose an arbitrator to the court and identify all issues to be resolved by the arbitrator. The arbitrator shall consent to serve and shall have no interest in the determination of the case or relationship with the parties or their counsel that would interfere with the impartial consideration of the case. An arbitrator selected pursuant to this section is not required to be an attorney.
>
> (3) The request for arbitration submitted by the parties shall provide for the manner of payment of the arbitrator.

In other words, Sup.R. 15(B) contemplates a substantive order referring a matter to arbitration. The order of reference contemplated by Sup.R. 15(B) is more than a ministerial act: it must both define the scope of the issues referred to arbitration and appoint the arbitrator with consideration for the recommendation of the parties and their proposed terms of payment. Sup.R. 15(B)(1)-(3). The Committee Comment to Sup.R. 15(B) clarifies that the trial court is not a passive observer in this process: "Under the rule, the judge *may*, but is not required to, grant the parties leave to have the case or issue arbitrated. This permissive rule will allow the judge to intervene when he or she feels that the selection of the arbitrator by the parties is not appropriate under the specific circumstances of a given case." (Emphasis in original.)

{¶12} The arbitration in this case did not result from an arbitration clause in a prenuptial agreement, as in *Kelm*, but from an agreement to arbitrate that arose during the course of the divorce litigation. For this reason, it falls within the situation contemplated by Sup.R. 15(B). Sup.R. 15(B) requires a trial court's active participation in the process of referring a domestic relations case to arbitration. In this case, the arbitration did not conform to the requirements of Sup.R. 15. At the outset, the parties did not submit a request for arbitration.

Likewise, they failed to identify for the court the proposed arbitrator, the manner of payment of the arbitrator, and the specific issue or issues to be resolved by the arbitrator. The record does not contain any indication that the trial court considered whether or not arbitration was appropriate in this case, nor whether the proposed arbitrator was appropriate under the circumstances. The trial court did not determine what issues were suitable for arbitration, nor did it appoint the arbitrator or set forth any terms related to the appointment. In fact, the docket is entirely silent during the period of time that this case proceeded to arbitration.

{¶13} The trial court erred by permitting this case to proceed to arbitration pursuant to agreement between the parties without compliance with the process set forth in Sup.R. 15(B). Ms. Cecchini's second and fourth assignments of error are sustained.

Assignment of Error Number One

> THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF THE APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY ENTERING AN ORDER CONFIRMING AND ADOPTING THE ARBITRATOR'S AWARD IN VIOLATION OF R.C. § 2711.14

Assignment of Error Number Five

> THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY FAILING TO ATTACH A COPY OF THE CHILD SUPPORT WORKSHEET IN DETERMINING CHILD SUPPORT.

Assignment of Error Number Six

> THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY FAILING TO AWARD ADEQUATE SPOUSAL SUPPORT.

Assignment of Error Number Seven

> THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION TO THE PREJUDICE OF THE APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY ISSUING A FINAL DECREE OF DIVORCE WHICH PROVIDES THAT GAETANO, A MULTI-MILLIONAIRE,

WILL PAY JENNIFER HER SHARE OF MARITAL PROPERTY OVER FIVE YEARS.

Assignment of Error Number Eight

THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY CONFIRMING AND ADOPTING AN ARBITRATION AWARD WHICH DOES NOT FOLLOW THE PARTIES' AGREEMENT TO ARBITRATE.

Assignment of Error Number Nine

THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY FAILING TO DIVIDE ALL OF THE MARITAL ASSETS, BY FAILING TO IDENTIFY ALL ASSETS AND BY FAILING TO EXPLAIN ITS UNEQUAL DISTRIBUTION.

Assignment of Error Number Ten

THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF THE APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY DENYING HER MOTION TO VACATE ON PROCEDURAL GROUNDS.

Assignment of Error Number Eleven

THE TRIAL COURT ERRED AS A MATTER OF LAW TO THE PREJUDICE OF THE APPELLANT, CROSS-APPELLEE, JENNIFER CECCHINI, BY DENYING HER MOTION TO VACATE ON SUBSTANTIVE ISSUES.

{¶14} Ms. Cecchini's remaining assignments of error are moot. *See* App.R. 12(A)(1)(c).

III.

{¶15} With respect to appeals numbered 2012 CA 00125, 2012 CA 00222, and 2013 CA 00022, Ms. Cecchini's third assignment of error is overruled. Her second and fourth assignments of error are sustained. The remaining assignments of error are moot. The judgment of the Stark County Court of Common Pleas, Domestic Relations Division, is affirmed in part and reversed in part, and this matter is remanded to the trial court for proceedings consistent with this opinion. Appeals numbered 2013 CA 00120 and 2013 CA 00229 are rendered moot by our decision.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Stark, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

BETH WHITMORE
FOR THE COURT

BELFANCE, P. J.
MOORE, J.
CONCUR.

(Belfance, P. J., Moore, J., and Whitmore, J., of the Ninth District Court of Appeals, sitting by assignment.)

APPEARANCES:

SUSAN K. PRITCHARD, Attorney at Law, for Appellant/Cross-Appellee.

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