

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Jeffrey M. Geiger,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-608 (C.P.C. No. 09CVH01-981)
Morgan Stanley DW, Inc.,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 22, 2010

Lane, Alton & Horst, LLC, and Christopher R. Pettit, for appellant.

Saretsky, Hart, Michaels & Gould, PC, Miles D. Hart, Samuel P. Mauch; Calfee, Halter & Griswold, LLP, and Peter A. Rosato, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Appellant, Jeffrey M. Geiger, appeals from an order of the Franklin County Court of Common Pleas denying his motion to modify an arbitration award rendered in arbitration proceedings involving him and his former employer, appellee, Morgan Stanley & Co., Inc., as successor-in-interest to Morgan Stanley DW, Inc.

{¶2} Geiger worked for Morgan Stanley as a commissioned financial investment advisor. He resigned under duress and then filed an arbitration statement of claim with

the Financial Industry Regulatory Authority ("FIRA") against his former employer alleging wrongful termination, coercion, and unfair competition. The matter went to a FIRA arbitration panel, before which Geiger presented expert testimony setting his damages at \$1,561,600 arising from his termination.

{¶3} The panel rendered a determination nominally in favor of Geiger, awarding him \$3,000 plus interest. The face of the arbitration award provides no explanation, rationale, or specific basis for the liability determination, nor does it present any computation supporting the amount awarded. Morgan Stanley tendered a check for the award amount including interest, and Geiger accepted and cashed the check.

{¶4} Thereafter, Geiger filed a motion in the court of common pleas to modify the arbitration award pursuant to R.C. 2711.13 and 2711.11. Morgan Stanley opposed the motion, arguing that Geiger had not established grounds for modification. In addition, Morgan Stanley argued that Geiger had ratified the arbitration award when he accepted and cashed Morgan Stanley's check. The trial court denied Geiger's motion to modify.

{¶5} Geiger has filed a timely appeal and brings the following sole assignment of error:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY
DENYING APPELLANT JEFFREY GEIGER'S MOTION TO
MODIFY ARBITRATION AWARD.

{¶6} The first issue we must address is whether this appeal is taken from a final appealable order; that is, whether an immediate appeal will lie from a trial court's denial of a motion to modify an arbitration award. Ohio precedent is split on this question.

{¶7} Our appellate jurisdiction under Section 3(B), Article IV, Ohio Constitution, and R.C. 2505.02 is limited to final appealable orders. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. To be final, an order must fit one of the categories set forth in R.C. 2505.02(B), either "[a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment," or "[a]n order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment." Arbitration actions under R.C. Chapter 2711 are special proceedings that did not exist as common law or equity. *Kelm v. Kelm* (1994), 93 Ohio App.3d 686, 691. Pursuant to R.C. 2505.02(A)(1), an order "affects" a substantial right when it is an order that, if not immediately appealable, would foreclose appropriate relief in the future. *Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197.

{¶8} The jurisdiction of courts to review arbitration awards under R.C. Chapter 2711 is limited to those powers set forth by statute. *Warren Edn. Assoc. v. Warren City Bd. of Edn.* (1985), 18 Ohio St.3d 170. A party may apply to the court for *confirmation* of the arbitration award under R.C. 2711.09, for *vacation* of the award under R.C. 2711.10 or, as in the case before us, for *modification* of the award under R.C. 2711.11. In turn, R.C. 2711.12 provides that the trial court shall enter judgment on such motions under the following circumstances:

Upon the granting of an order confirming, modifying, correcting, or vacating an award made in an arbitration proceeding, the court must enter judgment in conformity therewith.

{¶9} The statute thus makes no mention of entering judgment if the court *refuses* to confirm, modify, or vacate an award. Likewise, R.C. 2711.15 authorizes an appeal from an order confirming, modifying, correcting, or vacating an award made in an

arbitration proceeding or from judgment entered upon an award. R.C. 2711.15 does not expressly authorize an appeal of an order denying a motion to modify an arbitration award.

{¶10} Morgan Stanley argues that no final order or judgment entered by the court of common pleas exists in the present case because neither party moved for confirmation, and the court neither modified nor vacated the arbitration award. Since the trial court denied modification, Morgan Stanley asserts, Geiger must first pursue confirmation of the arbitrator's award under R.C. 2711.09 to obtain an appealable order from the court of common pleas, even though this paradoxically places the burden upon Geiger to request confirmation of an award with which he disagrees.

{¶11} At least one Ohio court has reached the same conclusion that Morgan Stanley urges on us. In *Binns v. Sterling Jewelers, Inc.* 9th Dist. No. 24522, 2009-Ohio-3359, the court took a strict reading of the statute and specifically held that an order of the court of common pleas denying modification of an arbitration award is not a final, appealable order. The *Binns* court felt that the trial court's order, although rendered in a special proceeding, did not foreclose appropriate relief in the future since the award could be confirmed and then appealed. *Id.* at ¶16.

{¶12} In contrast, Ohio's Seventh Appellate District held otherwise in *FIA Card Servs., N.A. v. Wood*, 7th Dist. No. 08-JE-13, 2009-Ohio-1513. On slightly different procedural facts, the court considered the case of a party appealing from a denial of a confirmation order under R.C. 2711.09. Even though this form of order is not one of the enumerated outcomes that required the court of common pleas to enter judgment under R.C. 2711.12, or that permitted an appeal under R.C. 2711.15, the Seventh District

reasoned that it affected a substantial right nonetheless and could form the basis for an appeal.

{¶13} We are persuaded by the analysis set forth in the *Wood* decision. We find that to require a party to obtain confirmation of an objectionable arbitration award before appealing a denial of a motion to modify that award serves neither the interest of reaching the merits of the case nor that of judicial economy. Injection of a vain and superfluous procedural step, one which, moreover, introduces awkward paradox into the judicial process, does not serve the overarching goals of the arbitration act codified at R.C. Chapter 2711. We accordingly find that a trial court's denial of an R.C. 2711.11 motion to modify constitutes a final, appealable order even in the absence of a confirmation of an award rendered by the trial court under R.C. 2711.09.

{¶14} We now turn to the merits of the appeal, first addressing Morgan Stanley's argument that, by accepting the financial benefit of the arbitration award and cashing Morgan Stanley's check tendered in satisfaction of that award, Geiger has ratified the outcome of the arbitration process and may no longer contest it. We find that this argument has merit.

{¶15} The general rule in civil cases, even beyond those involving arbitration, is that a party who has accepted the fruits of a judgment may not then challenge that judgment on appeal. *Julier v. Julier* (1900), 62 Ohio St. 90; *Block v. Block* (1956), 165 Ohio St. 365; *State ex rel. Barner v. Marsh* (1929), 121 Ohio St. 321; *Ohio State Tie & Timber, Inc. v. Paris Lumber Co.* (1982), 8 Ohio App.3d 236, 239 (overruled on other grounds, *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.* (1990), 53 Ohio St.3d 73). This bar on appeal is sometimes couched in terms of waiver, see, e.g., *Fidelcor*

Mort. Corp. v. Ins. Co. of N. Am. (1987), 820 F.2d 367, 369-70, or as a form of judicial estoppel, *Lynch v. Baxley* (1974), 386 F.Supp. 378, 403, fn. 10 (Varner, dissenting) and *Sealover v. Carey Canada* (1992), 806 F.Supp. 59, or both, *Price v. Franklin Invest. Co., Inc.* (1978), 574 F.2d 594, 597. See also *Compton v. Jesup* (1897), 167 U.S. 1, 35, 17 S.Ct. 795, 808. The most common term used to express why a party that has accepted the fruits of a judgment cannot challenge that judgment on appeal, is ratification.

{¶16} With respect to post-arbitration proceedings specifically, Ohio courts have gone even further, holding that there is no right even to obtain confirmation of an arbitration award under R.C. 2711.09 when the party so moving has ratified the award by accepting payment or otherwise reaping the full benefit of the award. *Luby v. Safeco Ins. Cos.* (Oct. 29, 1987), 8th Dist. No. 52874. The court in *Luby* reasoned that because ratification of the arbitration award had eliminated any vestige of controversy, the court of common pleas had no justifiable controversy before it upon which to pass judgment. The reasoning in *Luby* was adopted by the Ninth District in *Weaver Workshop and Support Assoc., OEA-NEA v. Summit Cty. Bd. of Retardation and Developmental Disabilities* (June 21, 2000), 9th Dist. No. 19780.¹ At least two other states have similarly applied a ratification theory to bar appeal of satisfied arbitration orders: *Harrington v. Warlick* (1988), 92 Or.App. 269; and *Futrelle v. Duke Univ.* (1997), 127 N.C.App. 244. These last

¹ However, we note that this rule of ratification allows for certain exceptions, such as in instances where a complex judgment leaves open the question of whether some of its benefits can be accepted without relinquishing others that were denied. See, generally, *Price* at 597 ("There is, however, a 'firmly established exception that when a judgment or decree adjudicates separable or divisible controversies, the appealing party may accept the benefit of the separable or divisible feature in his favor and challenge the feature adverse to him' ", citing *Luther v. United States* (C.A.10, 1955), 225 F.2d 495, 497). The present case, however, involves a simple monetary judgment and is therefore not subject to any exception and remains perfectly suited to the doctrine of ratification.

two cases underpin the concept of ratification with principles of contract, specifically the doctrine of accord and satisfaction.

{¶17} In summary, we find that Geiger has fully accepted the benefits of the arbitration order and, having thus ratified it, does not have standing to pursue modification of that order in the court of common pleas.

{¶18} Even if Geiger had standing, the trial court did not err in denying the motion to modify the arbitration order. First, we find that several procedural errors claimed by Geiger on appeal are without merit. Geiger asserts that the trial court, after docketing his motion to modify the arbitration award, generated a typical case schedule for the matter including discovery cutoff dates, disclosure of witnesses, and the like. Geiger argues that the trial court thereafter did not comply with its own case schedule, denied him the right to make discovery in the case, and ruled on the motion only based upon the motion itself, the supporting documents attached thereto by Geiger, and Morgan Stanley's memorandum in opposition.

{¶19} A motion filed under R.C. 2711.11 occupies a hybrid procedural position, only vaguely defined by the statutes that provide for it. In practice, it is not a full complaint initiating a civil matter, even though it may result in an appealable final order and judgment. There is no authority for the proposition that a trial court must apply any greater procedural enlargement to the parties than would be accorded to any other motion before the trial court. Under these conditions, we examine the trial court's treatment in the present under the basic criteria for due process accorded to the litigants.

{¶20} R.C. Chapter 2711 provides little guidance as to the procedure applied to motions brought thereunder. R.C. 2711.14 does specifically provide that a party bringing

a motion for an order confirming, modifying, correcting, or vacating an arbitration award must file certain exhibits with the motion, most significantly, a copy of the award order itself, the underlying arbitration agreement, and other affidavits or documents in support of the proposed modification, confirmation, or correction to the award. Geiger filed sufficient documentation with his motion to allow the trial court to consider, most significantly, the face of the arbitrator's award and the most significant evidence that Geiger submitted to the arbitration panel in support of his claimed damages. This was sufficient for the trial court to address and ascertain the merits of Geiger's basis for seeking modification of the award, i.e., that the award simply strayed too far from the evidence he submitted to the arbitration panel in support of his alleged damages.

{¶21} While Geiger claims that he was entitled to discovery, he points to no credible object of discovery that would have assisted the court of common pleas in ascertaining the merits of his motion. Under R.C. 2711.11(A), the subsection relied upon by Geiger, the court of common pleas may modify an award that is based upon "an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award[.]" The face of the arbitration award in the current case, by its very brevity, leaves little room to evaluate the basis for the arbitrators' decision. The only basis for "evident material miscalculation of figures" is the great divergence between the arbitration panel's assessment of Geiger's damages, and the sums proposed by his expert. On the face of the award, we see no evident miscalculation, only an evident disregard for the expert's opinion. Under the statute, this is insufficient to support modification of the arbitration award.

{¶22} We therefore find that there was neither procedural defect in the court of common pleas' handling of the motion, nor in the court's substantive disposition of the motion. Geiger has not shown that the court of common pleas erred when it denied his motion to modify the arbitration award.

{¶23} In summary, we find that this case presents us with a final, appealable order and we may proceed to consider the merits. It is undisputed that appellant accepted the full monetary benefit of the arbitration award. Therefore, Geiger ratified the award. His ratification of the arbitration award prevents him from challenging the award in the court of common pleas or in this court. We further find that, even if ratification did not bar his attempt to modify the award, Geiger did not present the court of common pleas a legal basis upon which to modify the award despite the court of common pleas affording all him necessary due process. Therefore, we overrule Geiger's assignment of error, and we affirm the judgment of the court of common pleas denying his motion to modify the arbitration award.

Judgment affirmed.

TYACK, P.J., and McGRATH, J., concur.
