NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

NANCY MCCAFFREY, Appellant v. PHILADELPHIA MONTGOMERY CHRISTIAN ACADEMY AND PEACEMAKER INSTITUTE FOR CHRISTIAN CONCILIATION, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3511 EDA 2012

Appeal from the Order entered November 8, 2012,
in the Court of Common Pleas of Montgomery County,
Civil Division, at No: August Term 2012, No. 23608

BEFORE: GANTMAN, ALLEN, and PLATT*, JJ.

MEMORANDUM BY ALLEN, J.: **FILED JULY 09, 2013**

Nancy McCaffrey ("Appellant") appeals from the trial court's order denying her motion for a preliminary injunction to avoid arbitration proceedings with her former employer, Philadelphia Montgomery Christian Academy ("PMCA"), which were to be conducted by Peacemaker Institute for Christian Conciliation ("ICC"). We affirm.

The trial court set forth the following factual and procedural history relative to this case:

> [Appellant] was hired as an elementary education teacher by Defendant, Philadelphia-Montgomery Christian Academy ("PMCA") beginning in the 2005 school year, pursuant to a one year employment contract. For each of the following six school years, PMCA elected to offer her employment for a one year

*Retired Senior Judge assigned to the Superior Court.

term. On six separate occasions [Appellant] accepted the offers, signing annual Contracts with PMCA.

Appellant's Contracts provided that any disputes arising from her employment would be submitted to Biblically based mediation, and if unresolved, then to binding arbitration before the Institute for Christian Conciliation ("ICC"). This provision was also included in PMCA's Faculty Handbook. The arbitration clause in her Contract explicitly stated:

> ... Therefore, any claim or dispute arising as a result of the creation, extension, or dissolution of the employment relationship between Employee and PMCA, or the matter of such creation, extension or dissolution shall be settled by Biblically based mediation and, if necessary, legally binding arbitration in accordance with the Rules of Procedure for Christian Conciliation of the [ICC]. Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction. The parties understand that these methods shall be the sole remedy for resolving any controversy or claim of arising out of this agreement and expressly waive their right to file a lawsuit in any civil court against one another for such disputes, except to enforce an arbitration decision.

Appellant was given her proposed contract and offer of employment for the 2010-2011 school year in March of 2010. She accepted PMCA's offer of employment and signed the Contract on March 29, 2010.

[Appellant] fulfilled her Contractual obligations for the 2010-2011 school year, but was not offered employment for the following school year. The Contract stated that mere completion of the year of employment did not obligate PMCA to offer her future employment. [Appellant] alleges that PMCA's decision was motivated by unlawful retaliation stemming from a disagreement she had with the principal. [Appellant's] employment was not terminated, she was simply not extended an offer of employment for the following school year.

Consistent with the employment contract's requirement that all disputes "arising as a result of the creation, extension or dissolution of the employment relationship be resolved through Biblically based mediation, and if necessary, binding arbitration, [Appellant] filed a claim with the ICC in September of 2011. She

> selected the "mediation followed by binding arbitration" option, and was represented by counsel.
>
> The ICC assigned a Case Manager to oversee administration of [Appellant's] claim. Ultimately, the mediation was unsuccessful, and the ICC transitioned the case to Arbitration, in accord with the Contract and [Appellant's] election when filing her claim. Early in the ICC arbitration process and without objection from Appellant, a neutral Arbitrator was appointed to resolve the dispute. After some initial discovery was taken, the ICC requested each party contribute fifty percent of the Arbitrator's retainer fee for a two to three day arbitration based on the Arbitrator's hourly rate. PMCA paid their portion of the fee, [Appellant] however, refused.
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> [Appellant] filed a Petition for a Special Injunction seeking to have this Court enjoin the ICC arbitration of her dispute so she may proceed with filing her claims in the Court of Common Pleas. In essence, the Appellant contends the structure of the proceedings was prejudiced, conducted in bad faith and did not provide Appellant with due process. After argument and thorough review of the record, this Court determined the Appellant had no legal basis for a preliminary injunction. Accordingly, by an order dated November 5, 2012, this Court denied the Appellants' petition for a preliminary injunction. Thereafter, Appellant filed this appeal.

Trial Court Opinion, 1/18/13, at 1-3. The trial court and Appellant have complied with Pa.R.A.P. 1925.

Appellant presents the following issues for our review:

> WHETHER THE COURT'S DECISION AND ORDER ARE AGAINST THE WEIGHT OF THE EVIDENCE AND CONTRARY TO THE LAW FOR THE FOLLOWING REASONS:
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> A. Whether Evidence Of Duress, Fraud or Unconscionability render the Alternative Dispute Resolution provision unenforceable;
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> B. Whether The Arbitrator Fee Was Unenforceable Because It Was Cost Prohibitive;

> C. Whether Appellant Met The Elements Of Injunction In [her] Motion[.]

Appellant's Brief at 8.

Appellant's issues are interrelated, and we will address them together. In reviewing a trial court's determination regarding a preliminary injunction, we apply an abuse of discretion standard, and "do not inquire into the merits of the controversy, but only examine the record to determine if there were any apparently reasonable grounds for the actions of the court below. Only if it is plain that no grounds exist to support the decree or that the rule of law relied upon was palpably erroneous or misapplied will we interfere with the decision of the [trial court]." ***Eckman v. Erie Insurance Exchange,*** 21 A.3d 1203, 1206 (Pa. Super. 2011). In this case, finding no trial court error of law or abuse of discretion, we affirm the trial court's denial of injunctive relief.

Appellant argues:

> [T]he trial court abused its discretion when it failed to even consider whether Appellant's evidence of duress, coercion and impartiality rendered the arbitration agreement unenforceable. Appellant alleged several examples of the ICC coercing Appellant into withdrawing her claim. Appellant also alleged that the ICC placed Appellant under duress by using Christian guilt to deter Appellant from vindicating her legal rights. All of the examples Appellant introduced…had a chilling effect on Appellant. As a result, the arbitration agreement should have been deemed unenforceable.

Appellant's Brief at 15. Appellant maintains that she "was not provided with notice of the nature of the [arbitration] proceedings when she signed her Agreement." *Id.* at 14. We disagree.

None of Appellant's allegations or "examples of coercion" establish that Appellant entered into her employment agreement with PMCA as a result of coercion or duress. Consequently, Appellant's allegations cannot defeat the enforceability of the employment contract. ***See Degenhardt v. Dillon Co.,*** 669 A.2d 946, 950 (Pa. 1996).

> We have long defined duress as "that degree of restraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness." *Strickland v. University of Scranton,* 700 A.2d 979, 986 (Pa. Super. 1997), *citing Smith v. Lenchner,* 204 Pa. Super. 500, 205 A.2d 626, 628 (1964). A party who has reasonable opportunity to consult with counsel before entering a contract cannot later invalidate it by claiming duress. *Degenhardt* [*v. Dillon Co., 669 A.2d 946,* 950 [Pa. 1996).
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> Duress cannot become an imagined factor to remedy second-guessing. [Where] the evidence establishes [that] [appellant] made a knowing and voluntary agreement…[t]he law requires [appellant] to honor that agreement.

Adams v. Adams, 848 A.2d 991, 993-994 (Pa. Super. 2004) (internal citations omitted). Here, too, Appellant must honor her agreement. Appellant had ample time to consult with an attorney during the five years she renewed her annual employment contract with PMCA. As asserted by PMCA's counsel, "the contract at issue for the particular year we are talking

about was given to [Appellant] almost 3 weeks before she actually was required to sign this. She could have had it reviewed by an attorney. She could have done any investigation into Peacemakers or the ICC. This was not something that was forced on [Appellant]." N.T., 11/2/12, at 18. Appellant cannot now claim that she did not have notice of the agreement's provisions, or that she was coerced into its terms.

Significantly, Appellant's counsel conceded that Appellant agreed to the "mediation arbitration provision…every year [Appellant] worked for [PMCA] since 2005…[which provided that] any claims need to be resolved through biblically-based mediation as well as arbitration through…[ICC]." N.T., 11/2/12, at 3. Appellant "also signed an [additional] agreement which she herself initiated. [Appellant] filed a claim with the ICC also further agreeing to mediate and [to] go to binding arbitration if mediation was unsuccessful." *Id.* at 4. Appellant's counsel acknowledged that "strictly the law in black and white says that these agreements are enforceable and these proceedings are with arbitration." *Id.* at 26.

The employment contract gave Appellant notice that Christianity would factor in Appellant's relationship with PMCA. Specifically, the contract provided that Appellant "personally agree[d] with and accept[ed] the principles of the Mission, Vision[,] and Values Statement of PMCA[,] and that [Appellant] will uphold and support them[.]" Appellant's Full Time Faculty Employment Agreement with PMCA, at 1. The agreement stipulated that Appellant would "strive, by God's grace, to live an exemplary Christian life

[and] [that Appellant] will maintain membership in good standing and regular attendance at an established Christian church…" *Id.* The contract cited the Bible immediately before delineating the requirement for biblically-based mediation, and stated that "[t]he parties acknowledge that the Bible commands them to make every effort to live at peace and to resolve disputes with each other in private or within the Christian Church. *See* Mathew 18:15-20; I Corinthians 6:1-8." *Id.* at 2. Given the express terms of the employment agreement, which Appellant repeatedly signed over five years, we find that Appellant's arguments of coercion, duress, impartiality, and lack of notice fail.

Likewise, Appellant's contention that the arbitration proceedings should be enjoined because they are cost prohibitive lacks merit. *See* Appellant's Brief at 14. Appellant argues that she was "required to pay $5,000 to participate in the three (3) day arbitration…[resulting in] her portion of the arbitration fee equat[ing to] roughly seven (7) weeks of her salary." *Id.* at 19. However, as Appellant's counsel conceded "anytime you're agreeing to arbitration the parties are going to underwrite the cost[.]…Someone has to pay for the arbitrator's fees and so on, and normally each side is requested to underwrite part of the cost." N.T., 11/2/12, at 22. Here, there is no dispute that the costs of the arbitration proceedings, which Appellant initiated, were to be borne equally by PMCA and Appellant. Therefore, we agree with the trial court's reasoning that "just [be]cause somebody doesn't want to pay [their portion of the

arbitration's cost],…that's not a basis to set aside the arbitration." *Id.* ***See Green Tree Financial Corp. – Alabama, et al. v. Randolph****,* 531 U.S 79, 92 (2000) (Arbitration agreement was not invalidated where the party seeking to avoid arbitration due to the cost failed to meet the burden "of showing the likelihood of incurring such [prohibitive] costs."). In this case, PMCA's counsel explained, "[the] requirement for the $5,000 from each side was for **a retainer** for what was agreed by the parties was going to be a 3-day hearing. The arbitrator's hourly fee was $225 **and whatever was left at the end of the hearing would be returned to the parties…**[T]he provision in the contract applies equally." N.T., 11/2/12, at 16 (emphasis supplied). Under these facts, Appellant does not meet the requisite burden of proving the "likelihood of incurring such [prohibitive] costs," such that she can avoid the arbitration based on its costs. ***See Green Tree, supra,*** at 92. This is particularly true where the trial court emphasized, "[the fee] [is] not a hundred thousand dollar fee or something on its face which is totally unreasonable….[and] if [Appellant] is successful in the arbitration, [Appellant] could recover [her] costs as part of [her] recovery." N.T., 11/2/12, at 23.

Appellant further contends that she meets the criteria for injunctive relief. *See* Appellant's Brief at 20. A party seeking a preliminary injunction must show:

> (1) [T]hat an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) that greater injury would

> result from refusing an injunction than from granting it…; (3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the activity [the party] seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; (5) the injunction [the party] seeks is reasonably suited to abate the offending activity; and (6) **that a preliminary injunction will not adversely affect the public interest**.

The York Group, Inc. v Yorktowne Caskets, Inc., 924 A.2d 1234, 1241 (Pa. Super. 2007) (internal citation omitted) (emphasis supplied). We have explained that "[f]or a preliminary injunction to issue, **every one** of the prerequisites must be established; if the petitioner fails to establish any of them, there is no need to address the others." ***Eckman,*** 21 A.3d at 1207 (Pa. Super. 2011) (emphasis in original). Here, we find that injunctive relief would adversely affect the interest of the public, where such relief is contrary to public policy.

In denying relief, the trial court noted:

> [T]he Pennsylvania Supreme Court has recently held that trial courts do not have the equitable authority to terminate the arbitration proceedings before the arbitrator has made a final award. *Fastuca v. L. W. Molnar & Associates, et al.,* 10 A.3d 1230 (Pa. 2011). The Court's holding is rooted in Pennsylvania's strong public policy favoring enforcement of arbitration agreements, and its desire to avoid having premature judicial involvement in the arbitration process whenever a litigant perceives that an unfavorable outcome may result.

Trial Court Opinion, 1/18/13, at 4.

The trial court's position as supported by ***Fastuca, supra,*** is consonant with the well-settled doctrine of ripeness. Our Pennsylvania Supreme Court has explained:

> [T]he doctrine of ripeness concerns the timing of a court's intervention in litigation. The basic rationale underlying the ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. [] [C]ourts should not give answers to academic questions or render advisory opinions or make decisions based on assertions as to hypothetical events that might occur in the future.

Philadelphia Entertainment and Development Partners, L.P. v. City of Philadelphia, 937 A.2d 385, 392 (Pa. 2007) (internal citations omitted).

In this case, Appellant seeks to avoid an arbitration with PMCA because she maintains "there is no opportunity for a fair tribunal from the ICC[.]." Appellant's Brief at 21. However, Appellant's request for injunctive relief *precedes* arbitration, and is therefore speculative. It is not a foregone conclusion that Appellant will not prevail at arbitration. Even if Appellant is unsuccessful, there is no certainty that the disposition would be the result of impartiality by the arbitration panel. An award in PMCA's favor could occur based on the merits of PMCA's defense that Appellant was not retaliatorily terminated, and Appellant's contract was not renewed as per PMCA's contractual right. *See* Appellant's Full Time Faculty Employment Agreement with PMCA, at 2. Appellant's preemptive request for injunctive relief conflicts with the dispute resolution principles underpinning arbitration proceedings, and is countermanded by the doctrine of ripeness. Therefore,

without needing to reach and discuss Appellant's failure to meet the remaining elements for injunctive relief, we affirm the trial court's order denying Appellant injunctive relief because Appellant's anticipatory request to avoid arbitration adversely affects the interest of the public, and results in Appellant's failure to meet the standards for entitlement to injunctive relief. *See* Trial Court Opinion, 1/18/13, at 4; ***see also Eckman,*** 21 A.3d at 1207 (Pa. Super. 2011).

Order affirmed.

Judgment Entered.

Prothonotary

Date: 7/9/2013