

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA HYLAND,

Plaintiff-Appellee,

v

PATRICK HYLAND,

Defendant-Appellant.

UNPUBLISHED

February 4, 1997

No. 187620

Macomb Circuit Court

LC No. 92-002406

Before: Doctoroff, P.J., and Hood and Paul J. Sullivan,* JJ.

PER CURIAM.

Defendant, who was formerly married to plaintiff, now disputes the division of marital property and the amount of his child support obligation. Before the trial date, the parties agreed to enter into binding arbitration. After extensive arbitration hearings, the arbitrator filed an award dividing the marital property and setting the amount of defendant's child support payments. A judgment of divorce based on the arbitration award was then entered. Defendant moved to vacate and set aside the arbitration award, but the trial court declined to do so. Defendant now appeals as of right from the entry of a divorce judgment. We affirm.

The only issue in this case is whether the trial court erred in refusing defendant's request to modify or vacate the arbitration award. Defendant claims that the arbitrator committed numerous errors which warrant reversal. We disagree.

A trial court's denial of a motion to vacate an arbitration award is reviewed de novo. *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 177-178; 550 NW2d 608 (1996). A court's power to vacate, modify, or correct an arbitration award is controlled by the rules of the Michigan Supreme Court, specifically MCR 3.602(J)(1) and (K)(1). *Id.* at 174-175; *Dick v Dick*, 210 Mich App 576, 588-589; 534 NW2d 185 (1995). Those sections read as follows:

(J) Vacating Award.

(1) On application of a party, the court shall vacate an award if:

* Circuit judge, sitting on the Court of Appeals by assignment.

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;

(c) the arbitrator exceeded his or her powers; or

(d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

* * *

(K) Modification or Correction of Award.

(1) On application made within 21 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if:

(a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or

(c) the award is imperfect in a matter of form, not affecting the merits of the controversy.

These rules limit a court's power to vacate, modify or correct an arbitration award. *Dohanyos, supra* at 174. The Michigan Supreme Court has emphasized the reasoning behind these rules, and has warned against their misuse:

By narrowing the grounds upon which an arbitration decision may be invaded, the court rules preserve the efficiency and reliability of arbitration as an expedited, efficient, and informal means of private dispute resolution.

* * *

Thus, an allegation that the arbitrators have exceeded their powers must be carefully evaluated in order to assure that this claim is not used as a ruse to induce the court to review the merits of the arbitrators' decision. Stated otherwise, courts may not substitute their judgment for that of the arbitrators and hence are reluctant to vacate or

modify an award when the arbitration agreement does not expressly limit the arbitrators' power in some way. [*Gordon Sel-Way v Spence Bros*, 438 Mich 488, 495, 497; 475 NW2d 704 (1991).]

In addition, general principles of arbitration preclude courts from “upsetting an award for reasons going to the merits of the claim.” *Id.* at 500.

Defendant raises numerous issues alleging that the arbitration award was erroneously entered. In essence, each of defendant’s arguments seeks review of the merits of the arbitrator’s decision. Pursuant to the Michigan Court Rules, we are prohibited from engaging in such review. *Id.* at 497. Accordingly, we find these arguments utterly devoid of merit.

The only other issue raised by defendant alleges that he was prejudiced by the failure of the arbitrator to make a verbatim record of the proceedings. However, there is no requirement that arbitration proceedings be recorded. *DAIIE v Gavin*, 416 Mich 407, 428; 331 NW2d 418 (1982). In addition, defendant did not raise this issue until midway through the arbitration proceedings. Thus, defendant cannot show that he was entitled to a verbatim record or that he raised this issue in a timely manner. Defendant is simply using the lack of a record at arbitration as a ruse to induce us to review the merits of the arbitrator’s decision. Again, we must decline to do so. *Gordon Sel-Way, supra* at 497.

Plaintiff argues that defendant should be sanctioned for filing a vexatious appeal under MCR 7.216(C)(1) and (2). While plaintiff has not filed a motion for such relief, the Court Rule allows this Court to discipline a party on its own initiative for violating the rule. We find that defendant has not raised any issues which would support a reasonable belief of merit. Under these circumstances, we conclude that defendant’s appeal was frivolous and we remand to the trial court for a determination of actual costs to be awarded to the plaintiff pursuant to MCR 7.216(C)(2).

Affirmed and remanded for a determination of actual costs to be awarded to the plaintiff pursuant to MCR 7.216(C)(2). We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan