

STATE OF MICHIGAN
COURT OF APPEALS

BRADLEY T. VAN SICKLE,

Plaintiff-Appellant,

UNPUBLISHED
April 22, 1997

v

No. 186699
Macomb Circuit Court
LC No. 94-000081 DM

TERESA D. VAN SICKLE,

Defendant-Appellee.

Before: Wahls, P.J., and Gage and W.J. Nykamp,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order entering a judgment of divorce. We affirm.

Plaintiff first requests that this Court review the arbitrator's factual findings to determine whether the property division was inequitable. Parties may properly agree to binding arbitration to resolve property distribution issues in a divorce case. MCR 3.216(A)(3); *Dick v Dick*, 210 Mich App 576, 582; 534 NW2d 185 (1995). Once the parties invoke binding arbitration, they are required to proceed according to MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq.*, and MCR 3.602, the statute and court rule governing arbitration procedures. *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 18; ___ NW2d ___ (1997); *Dick, supra*, p 588.

The scope of this Court's review is very narrow. A court may vacate an arbitration award only where: 1) the award was procured by corruption, fraud, or other undue means; 2) the arbitrator evidenced partiality, corruption, or other misconduct prejudicing a party's rights; 3) the arbitrator exceeded his or her powers; or 4) 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. MCR 3.602(J)(1); *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174-175; 550 NW2d 608 (1996).

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

Here, because the arbitration agreement denies any appeal of the procedural methods adopted by the arbitrator, but permits appeal of the substantive issues to this Court, it does not comport with the requirements of MCR 3.602. *Dick, supra*, p 589. Parties may not agree to expand the scope of judicial review of statutory arbitration. See *Brucker, supra*, p 18. Because plaintiff has not alleged any wrongdoing on the part of the arbitrator, we are unable to review the property division in the instant case. MCR 3.602(J)(1); *Dohanyos, supra*, pp 174-175.

Plaintiff next argues that the arbitrator erred by awarding defendant fifty percent of any money plaintiff receives from his possible causes of action arising out of his automobile accident and/or employment termination because the causes of action were his separate property. We disagree.

This Court may vacate an arbitration award if the arbitrator exceeded his or her powers. MCR 3.602(J)(1)(c). An arbitrator exceeds his powers when he acts beyond the material terms of the contract from which he draws his authority, or when he acts in contravention of controlling principles of law. *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). Where it clearly appears on the face of the award, or in the reasons for the decision as stated, that the arbitrator was led to a wrong conclusion through an error of law, and, but for that error, a substantially different award must have been made, an award will be vacated. *Id.*, p 443.

A right of action is property and may be divided between divorcing parties. *Postill v Postill*, 116 Mich App 578, 580; 323 NW2d 491 (1982). Furthermore, characterization of a right of action as personal does not affect its divisibility in divorce proceedings because the trial court retains jurisdiction to distribute both jointly held and individually held property. *Bywater v Bywater*, 128 Mich App 396, 399; 340 NW2d 102 (1983). Therefore, even if money plaintiff receives from his possible causes of action is considered separate property, the arbitrator did not act in contravention of a controlling principle of law by awarding one-half of such property to defendant. Accordingly, the arbitrator did not exceed his powers, and this Court will not disturb the arbitrator's division of property. MCR 3.602(J)(1); *Dohanyos, supra*, pp 174-175.

Affirmed. Defendant being the prevailing party, she may tax costs pursuant to MCR 7.219.

/s/ Myron H. Wahls
/s/ Hilda R. Gage
/s/ Wesley J. Nykamp