

STATE OF MICHIGAN  
COURT OF APPEALS

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HELEN M. STILLWAGON,

Plaintiff-Appellant,

v

ROBERT T. STILLWAGON,

Defendant-Appellee.

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UNPUBLISHED

July 25, 1997

No. 190421

Wayne Circuit Court

LC No. 94-434706-DO

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, J.J.

PER CURIAM.

On October 20, 1995, the trial court entered a judgment of divorce dissolving the marriage between plaintiff and defendant. Plaintiff appeals as of right the trial court's denial of her motion to dismiss her complaint and the trial court's failure to hold an evidentiary hearing on the issues whether she consented to arbitration and whether the arbitration award was sound. We affirm.

Plaintiff first argues that the trial court abused its discretion by refusing to grant her motion for voluntary dismissal. The trial court's decision to deny a motion for voluntary dismissal is discretionary and will be reversed only if this Court determines that the lower court abused its discretion. We will not set aside a denial of a such a motion unless it can be said that the lower court's action was without justification. *Mleczko v Stan's Trucking, Inc*, 193 Mich App 154, 155; 484 NW2d 5 (1992).

According to MCR 2.504(A)(2), "an action may not be dismissed at the plaintiff's request except by order of the court on terms and conditions the court deems proper." We find that the trial court properly found that plaintiff was not entitled to dismissal of her complaint. The trial court accurately weighed the competing interests of the parties and correctly concluded that plaintiff's arguments in favor of dismissal were unpersuasive. Most notably, the case had been through binding arbitration. This Court has approved the use of binding arbitration to resolve divorce cases. *Dick v Dick*, 210 Mich App 576, 581-582; 534 NW2d 185 (1995). Arbitration is a voluntary process in which the parties agree to submit certain issues or an entire dispute to a neutral third party who hears

each side and renders an opinion by which the parties will usually be bound. MCL 600.5001(1), (2); MSA 27A.5001(1), (2). According to MCR 3.602(J)(1), an arbitration award may not be set aside unless: (1) the arbitrator or another is guilty of fraud, corruption, or used other undue means; (2) the arbitrator evidenced partiality, corruption, or misconduct prejudicing a party's rights; (3) the arbitrator exceeded his or her powers; (4) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear material evidence, or conducted the hearing to prejudice substantially a party's rights. Upon review of the lower court record, we conclude that no evidence exists that the arbitrator acted improperly in this case.

Although plaintiff denies having agreed to arbitration or having been told of its binding nature, her counsel specifically agreed to binding arbitration. In fact, plaintiff's counsel prepared the order referring the case to arbitration. An attorney who has responsibility for a lawsuit is presumed to have had the authority to act on her client's behalf. *Jackson v Wayne Circuit Judge*, 341 Mich 55, 59; 67 NW2d 471 (1954). Moreover, plaintiff personally attended arbitration and failed to advance any objections to the process. The trial court did not abuse its discretion by denying plaintiff's motion for voluntary dismissal merely because, as appears to be the reason, plaintiff was unhappy with the outcome of arbitration.

Moreover, we believe the fact that plaintiff requested dismissal at such a late stage in the divorce proceedings was an adequate reason for the trial court's denial of her motion. When plaintiff filed her motion to dismiss, the trial court was fully prepared to enter the judgment of divorce. Defendant had expended considerable time, energy, and money in defending the case. He should not be penalized by being forced to litigate a second time. See *African Methodist Episcopal Church v Shoulders*, 38 Mich App 210, 212; 196 NW2d 16 (1972) ("As the purpose of [the court rule governing dismissal] is to protect defendant from the abusive practice of dismissal after much time and effort has been put into a lawsuit, any dismissal should be on terms and conditions which protect *defendant*." (emphasis in original)). Consequently, we conclude that the trial court acted well within the bounds of its discretion by denying plaintiff's motion to dismiss.<sup>1</sup> See *Rosselott v Muskegon County*, 123 Mich App 361, 373-376; 333 NW2d 282 (1983); *Makuck v McMullin*, 87 Mich App 82, 86; 273 NW2d 595 (1978).

Next, plaintiff argues that the trial court abused its discretion by failing to hold an evidentiary hearing regarding the issues whether plaintiff consented to arbitration, and whether the arbitration award was correct. We note that plaintiff never specifically requested an evidentiary hearing below. At best, plaintiff merely asked to be allowed to state her view of the case. This Court has held that a trial court is obligated to conduct an evidentiary hearing to resolve an ambiguity or a factual proceeding relating to a divorce only if a party specifically asks for an evidentiary hearing. *Mitchell v Mitchell*, 198 Mich App 393, 399; 499 NW2d 386 (1993). Accordingly, the issue of whether plaintiff was entitled to an evidentiary hearing is not preserved for appellate review. Further, even if we were to find this issue preserved for review, plaintiff's argument concerning this issue is sparse, underdeveloped, and made without supporting authority. A party may not leave it to this Court to search for authority to sustain or

reject its position. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). Accordingly, we hold alternatively that plaintiff has abandoned this issue.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Roman S. Gibbs

<sup>1</sup> During the hearing on plaintiff's motion to dismiss, the trial court erroneously stated that under the court rule, a complaint cannot be dismissed unless the defendant consents to the dismissal. This is not true. Under MCR 2.504(A)(2), the trial court has the power to dismiss a complaint without the defendant's consent if the court deems it proper to do so. To the extent that the trial court misconstrued MCR 2.504 by stating that it needed defendant's consent to dismiss, reversal is not warranted, because the trial court reached the right result for the wrong reason. *Hawkins v Dep't of Corrections*, 219 Mich App 523, 528; 557 NW2d 138 (1996). Because under MCR 2.504(A)(2) the trial court was allowed, but not required, to condition dismissal of plaintiff's complaint upon defendant's consent, the trial court's holding was not error. The trial court's misstatement of law does not require reversal.