

STATE OF MICHIGAN
COURT OF APPEALS

LINDA KATO,

Plaintiff-Appellee,

v

JOSEPH KATO, JR.,

Defendant-Appellant.

UNPUBLISHED

March 3, 1998

No. 198212

Wayne Circuit Court

LC No. 95-527507 DM

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right a judgment of divorce entered by the circuit court pursuant to a decision made under binding mediation. We affirm.

During the pendency of the proceedings in the lower court, the parties stipulated that the issues inherent in their divorce would be submitted to binding mediation; the trial court so ordered. Thereafter, defendant sought to have the trial court set aside the mediator's decision on the grounds that (1) the mediation proceeding did not comply with MCR 3.602 in that the mediator was biased, and (2) the mediator relied on an incorrect figure in determining the value of defendant's pension. The trial court denied defendant's motion to set aside the mediation report. The court found no evidence showing a bias on the mediator's part which would justify setting aside the mediation report. The trial court entered the judgment of divorce accordingly.

The sole argument for our resolution is whether the trial court erred in refusing to vacate the mediator's decision. Defendant argues that the mediator's decision violated Michigan law because it "virtually impoverished" one party in a divorce action in order to benefit the other. Defendant also argues that the decision is inimical to the parties' own stipulations and charge to the mediator. We disagree.

Defendant first asserts that the mediator exceeded her powers by incorrectly determining the value of defendant's property (including defendant's pension), and thus that the mediator's determination of spousal support was based upon an incorrect value. In a similar vein, defendant also claims that the mediator erred in making plaintiff's spousal support award non-modifiable because

defendant's discretionary income could change. This Court has stated "that reviewing a decision to determine if the mediator has exceeded his powers should not be used as a ruse to review the mediator's decision to see if he merely made an error." *Frain v Frain*, 213 Mich App 509, 512; 540 NW2d 741(1995), *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991). Defendant's arguments clearly fall within this category; he merely disputes the amount and term of spousal support. Since the challenged items were within the mediator's power to decide, they are not reviewable by this Court. *Frain, supra* at 513.

Defendant raises two more tangential arguments on appeal: first, that the mediator was biased because she failed to disclose that she and plaintiff's attorney knew each other, and second, that the mediator failed to conduct the mediation hearing pursuant to MCR 3.602(E). We decline to review these arguments as neither was set forth in defendant's statement of the issues presented and thus are not properly before the Court. MCR 7.212(C)(5); *Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995).

For the above reasons, we conclude that the trial court did not err in declining to review the mediator's decision.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Michael R. Smolenski