STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL T. LUSTIG,

Plaintiff-Appellee,

v

FILOMENA G. LINDROS,

Defendant-Appellant.

UNPUBLISHED
April 14, 1998

No. 191626
Wayne Circuit Court
LC No. 94-425156-DO

Before: Hoekstra, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendant appeals as of right from the parties' judgment of divorce, which was based on an arbitration award. Defendant filed several post-judgment motions attacking the judgment and the underlying arbitration award, none of which were successful. On appeal, she again seeks reversal of the judgment on various grounds. We affirm.

Defendant argues that the divorce judgment is void ab initio because the trial court lacked jurisdiction after July 10, 1995, when the case was dismissed for lack of progress on that date, and neither party thereafter filed a motion for reinstatement. The order was later set aside by the trial court.

> Jurisdiction is the power of a court to act and the authority of a court to hear and determine a case. A court's subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint. If it is apparent from the allegations that the matter alleged is within the class of cases with regard to which the court has the power to act, then subject-matter jurisdiction exists. Any subsequent error in the proceedings amounts to error in the exercise of jurisdiction. When a court lacks subject-matter jurisdiction, the court's acts and proceedings are of no force and validity.
>
> An order entered without subject-matter jurisdiction may be challenged collaterally and directly. Error in the exercise of jurisdiction may be challenged only on direct appeal. The erroneous exercise of jurisdiction does not void a court's jurisdiction as does the lack of subject-matter jurisdiction. However, error in the exercise of jurisdiction can result in the setting aside of the judgment. [*Grubb Creek Action*

Comm v Shiawassee County Drain Comm'r, 218 Mich App 665, 669; 554 NW2d 612 (1996) (citations omitted.)]

Based on the allegations in plaintiff's complaint, the trial court in this case initially had subject-matter jurisdiction, and the dismissal of the case on July 10, 1995, did not divest the court of jurisdiction. *Id.* The court's orders and judgment were not void for lack of jurisdiction, and defendant's assertions to the contrary are without merit.

Defendant also argues that, by the express terms of the order for arbitration, the arbitrator's authority expired and jurisdiction was divested before the award was issued. The order for binding arbitration states that arbitration "shall take place prior to March 28, 1995" and that the arbitrator "reserves jurisdiction" for fourteen days following the issuance of the award. Defendant claims that by the terms of the order the arbitrator did not have jurisdiction to act fourteen days after March 28, 1995. However, defendant's challenge to the arbitrator's authority and jurisdiction to act is not preserved for appellate review. Defendant participated in the arbitration and did not raise this issue until her January 18, 1996 motion for relief from judgment. A party may not participate in arbitration and adopt a 'wait and see' posture, complaining for first time only if the ruling on the issue submitted is unfavorable. *Arrow Overall Supply Co v Peloquin Enterprises*, 414 Mich 95, 99-100; 323 NW2d 1 (1982), citing *American Motorists Ins Co v Llanes*, 396 Mich 113; 240 NW2d 203 (1976). Thus, defendant's participation in the arbitration precludes her from asserting that the arbitrator did not have the authority and jurisdiction to act.

Defendant also argues that the judgment was erroneously entered because it purports to be entered on the motion of defense counsel based on defendant's counter-claim. According to defendant, defense counsel did not move to have the judgment entered, and even if counsel did, she did not have the authority to do so because the attorney-client relationship had been terminated. This argument is without merit. Plaintiff moved for entry of the judgment. To the extent that the judgment is incorrect, the error is harmless. MCR 2.613(A).

Defendant next argues that plaintiff's complaint was fraudulent because it did not disclose the existence and dismissal of an earlier complaint for divorce between the parties, and it misstated the date of separation and the county of plaintiff's residence. This issue was not raised before the trial court until after the arbitration award was filed. Defendant's failure to promptly bring to the court's attention that an earlier action had been filed and dismissed seems to have been an attempt to harbor error as an appellate parachute. *People v Shuler*, 188 Mich App 548, 552; 470 NW2d 492 (1991).

In any event, we conclude that these allegations do not provide a basis for reversal of the judgment. Defendant's argument is based in part on plaintiff's failure to indicate on his complaint the existence of a prior action between the parties. The earlier action, no. 92-203096-DO, was assigned to Judge Helene White, who was at that time a Wayne County judge. The action was dismissed by stipulation on April 28, 1992. Defendant asserts that the case should have been assigned to the successor to Judge White and that plaintiff was "judge-shopping" to avoid a female judge. Assuming that defendant's accusations are true, defendant is not entitled to reversal of the judgment. Although MCR 2.113(C)(2) requires the disclosure of prior actions between the parties, there is no indication

that the penalty for noncompliance may be the reversal of an otherwise valid judgment. Although defendant claims that plaintiff was judge-shopping, she can only speculate that she was prejudiced by the assignment of the case to Judge Talbot. In regard to defendant's argument that the complaint was false because it misstated the date of separation and plaintiff's county of residence, even assuming that defendant is correct, we find no basis for granting her relief from the judgment.

Defendant next claims that the judge's acceleration of the trial date constituted coercion or duress, and therefore the arbitration agreement is void or voidable. We disagree.

An arbitration agreement is not binding if it was signed as a result of force or coercion. *Horn v Cooke*, 118 Mich App 740, 745; 325 NW2d 558 (1982). "'Duress exists when one by the unlawful act of another is induced to make contract or perform some act under circumstances which deprive him of the exercise of free will.'" *Beachlawn Building Corp v St. Clair Shores*, 370 Mich 128, 133; 121 NW2d 427 (1963), quoting *Hackley v Headley*, 45 Mich 569, 574; 8 NW 511 (1881). Coercion has been defined as the "application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done." *Norton v State Hwy Dep't*, 315 Mich 313, 319-320; 24 NW2d 132 (1946). The court's decision to accelerate the trial date is not sufficient to establish duress or coercion. Defendant chose to agree to binding arbitration rather than participate in a trial on short notice. Preparing for trial quickly may have been inconvenient, but that is insufficient to establish duress or coercion.

Defendant argues that the arbitration procedure did not afford her due process. We find no basis for reversal inasmuch as defendant consented to the procedure.

The stipulated order for binding arbitration provides:

> IT IS FURTHER ORDERED that the format of the arbitration shall be determined by the Arbitrator and counsel for the parties, subject to the approval of the parties, with the objective of expediting a hearing.

Defendant now complains that the format used by the arbitrator was unsatisfactory. However, there is no evidence in the record that defendant objected to the procedure used or was dissatisfied with the format until after the award was rendered. Because the arbitration order provided that the format would be approved by the parties, and there is no indication that defendant did not approve, she should not now be heard to complain about the procedure to which she apparently consented.

Defendant claims that the trial court erred by denying her motion for time to retain counsel so a motion to vacate the arbitration award could be filed before the judgment was entered. We find no abuse of discretion. See *Arrington v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 548-550; 493 NW2d 492 (1992). In any event, defendant has not shown that she was prejudiced by the court's denial of her motion. The court explained that the decision would not preclude defendant from filing a motion attacking the judgment based on the alleged defects in the arbitration award. Defendant followed the course of action by filing several post-judgment motions.

Thus, because defendant still had the opportunity to argue that grounds existed for vacating the award, she was not prejudiced by court's refusal to give her additional time before entering the judgment.

Defendant claims that the trial court erred in denying her motions for rehearing and for a new trial. Defendant has failed to adequately brief this issue. *Guardiola v Oakland Hosp*, 200 Mich App 524, 536; 504 NW2d 701 (1993). Ultimately, the determination whether the court abused its discretion when it denied the motions for rehearing and new trial depends on whether defendant demonstrated adequate grounds for vacating the arbitration award. However, defendant's brief does not apply the law governing vacation of an arbitration award to the facts of this case. Defendant's post-judgment motions were similarly inadequate. Furthermore, the contentions made in these motions amount to an assertion that the arbitrator made a mistake, which is not a basis for vacating the award, and therefore, not a basis for disturbing the judgment. Under the circumstances, we find no abuse of discretion. *Huspen v T & H, Inc*, 200 Mich App 162, 167; 504 NW2d 17 (1993); *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 410-411; 516 NW2d 502 (1994).

Next, defendant relies on *Kauffman v Hass*, 113 Mich App 816; 318 NW2d 572 (1982), for the proposition that the trial court should have granted an evidentiary hearing on the fraud or the neutrality of the arbitrator. Although *Kauffman* supports the general proposition that in certain circumstances an evidentiary hearing may be granted, in this case, defendant's allegations do not make the threshold showing of fraud or partiality to justify an evidentiary hearing. We find no error.

Defendant argues that the trial court erred by assessing $500 in sanctions at the hearing on defendant's motion for new trial and that the sanctions should be set aside because the court did not make a finding that defendant's pleading was frivolous.

Although the trial court did not state the basis for imposing sanctions, we conclude that sanctions were imposed under MCR 2.114. Defendant's motion for new trial was filed on November 9, 1995, three days after the trial court denied her motion for rehearing, which contained many of the same arguments. Defendant did not argue how the alleged errors provided a legal basis for the court to vacate the arbitration award and the judgment of divorce. Rather, the brief in support of defendant's motion quotes MCR 2.611(A) and states that the decision is within the court's discretion and that application of the cited authority to the grounds in the motion warrants a new trial. Defendant did not cite authority indicating that MCR 2.611(A), governing motions for new trial, is applicable when the judgment was entered pursuant to an arbitration award. Under these circumstances, the court had a basis for concluding that defendant's motion was not "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." MCR 2.114(D)(2). The absence of an explicit finding does not necessitate a remand. See *Siecinski v First State Bank of East Detroit*, 209 Mich App 459; 531 NW2d 768 (1995).

Defendant argues that the award is unsupported by the great weight of the evidence. However, such an argument attacks the merits of the award and is outside the scope of the limited review of an arbitration award. *Belen v Allstate Ins Co*, 173 Mich App 641, 645; 434 NW2d 203 (1988). Defendant's further arguments in this part of her brief (specifically, that the award was against public

policy and a product of plaintiff's and his counsel's fraud) are not preserved for appellate review. MCR 7.212(C)(5); *Preston v Dep't of Transportation*, 190 Mich App 491, 498; 476 NW2d 455 (1991).

Finding no need to remand this case for further proceedings, we need not address defendant's argument that the case should be reassigned to a different judge.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Myron H. Wahls
/s/ Roman S. Gribbs