

STATE OF MICHIGAN
COURT OF APPEALS

PETER ARGEROPOULOS,

Plaintiff-Appellee,

v

ROSALIE ARGEROPOULOS,

Defendant-Appellant.

UNPUBLISHED

June 1, 1999

No. 208391

Oakland Circuit Court

LC No. 96-522260 DO

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce which gave effect to an arbitration award that decided all issues relevant to the divorce. We affirm.

I

Plaintiff filed for divorce after approximately twenty-five years of marriage to defendant. The parties agreed to participate in binding arbitration on all issues of the divorce. Sheldon Larky was appointed arbitrator, and a hearing was scheduled for September 15, 1997. The September 15, 1997, date was confirmed in a letter sent to defense counsel on July 11, 1997. In turn, defense counsel sent a letter to defendant on July 11, 1997, notifying her of the hearing date. On August 25, 1997, defendant's counsel filed a motion to withdraw as her counsel. Defendant failed to appear at the August 27, 1997, hearing on the motion. In an order filed on September 10, 1997, the trial court granted defendant's counsel's motion to withdraw from the case and, on September 13, 1997, defendant received a letter from her former counsel notifying her of the withdrawal.

The September 13, 1997, letter also reminded defendant of her need to attend the scheduled arbitration hearing and informed defendant that certain documents retrieved from her accountant were in the possession of plaintiff's counsel. When defendant failed to show up at the start of the arbitration hearing, Larky telephoned defendant and informed her that if she did not appear, the hearing would proceed without her participation. Separate requests for adjournment of the hearing made by an advisor to defendant and her accountant were denied. The hearing proceeded as scheduled without defendant in attendance. Thereafter, Larky mailed a copy of his proposed award to defendant, but

received no response. Larky finalized his award and submitted it to the circuit court. On October 8, 1997, the circuit court issued its divorce judgment giving effect to the arbitration award. Defendant's subsequent motion to vacate the award and set aside the judgment was denied.

II

Defendant argues that the arbitration award should be vacated because the arbitrator exceeded his power in several respects. Under MCR 3.602(J)(1),

An arbitration award may be vacated if (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident partiality by an arbitrator, corruption by an arbitrator, or misconduct prejudicing a party's rights; (3) the arbitrator exceeded granted 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. [*Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174-175; 550 NW2d 608 (1996).]

A reviewing court may vacate an arbitration award where it finds an error of law that is apparent on its face and so substantial that, but for the error, the award would have been substantially different." *Collins v Blue Cross Blue Shield of Michigan*, 228 Mich App 560, 567; 579 NW2d 435 (1998), citing *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991). Accord *DAIIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982).

A

Defendant argues that because the arbitrator was put on notice by the September 13, 1997, letter that defendant had only two days notice of her attorney's withdrawal, and that defendant did not have in her possession records and files pertaining to matters to be arbitrated, the arbitrator exceeded his authority by refusing to adjourn the arbitration hearing. We disagree.

Defendant's former counsel asserted in her brief in support of her motion to withdraw that she notified defendant of her intent to withdraw on July 10, 1997, and again on August 14, 1997. No evidence contradicts that assertion. Further, we note that defendant chose not to appear at the August 27, 1997, hearing on defense counsel's motion to withdraw. Thus, we conclude that defendant was adequately notified of her counsel's intent to withdraw and did not first learn of her withdrawal through the letter received two days prior to the arbitration hearing. There is also nothing in the record to indicate that defendant made any effort to contact Larky before the start of the hearing. Instead, she once again simply chose not to appear. Given defendant's lack of diligence in the matter, we conclude that the arbitrator did not err in proceeding with the hearing as scheduled. See *Wykoff v Winskey*, 9 Mich App 662, 668-669; 158 NW2d 55 (1968).

As for the referenced records and files, the lower court record also indicates that these documents were defendant's own financial records that had been supplied to plaintiff during discovery. Defendant fails to indicate precisely what information was contained in the documents, or to show that

the arbitrator relied on them to defendant's detriment. Under these circumstances, we conclude that defendant again fails to establish that the circuit court erred in denying defendant's motion to vacate the arbitration award on the grounds that the arbitrator refused to postpone the hearing. MCR 3.602(J)(1)(d). For these same reasons, we also reject defendant's argument that she was denied a fair arbitration hearing by the arbitrator because she was denied access to her financial records.

B

Defendant also contends that the arbitrator exceeded his authority by compelling defendant to waive her right to counsel at the hearing. She asserts that Larky's statement on the day of the hearing indicating that the hearing would definitely proceed with or without her in attendance, forced the waiver. We disagree.

Parties to an arbitration have the right to be represented by an attorney and any waiver of that right before a proceeding or hearing is ineffective. MCR 3.602(G). An arbitrator has the right to proceed to hear and determine any matter submitted to him even when a party to the dispute neglects to appear for the hearing if the party neglecting to appear was given due notice of the hearing. MCL 600.5011; MSA 27A.5011.

The record establishes that defendant was informed of the hearing date on at least two prior occasions. Defendant offers no compelling argument or evidence contesting either her receipt or the effectiveness of this prior notice. Additionally, as we previously concluded, the record establishes that defendant's failure to have retained counsel on the day of the hearing was due to her own lack of diligence. See *supra* part IIA. Under these circumstances, we conclude that defendant was given sufficient advance notice of the arbitration hearing to allow her to retain other counsel to represent her interests at the hearing. Because defendant has offered no greater evidence of any affirmative conduct by Larky that could reasonably be construed as improperly infringing on defendant's right to counsel, we conclude that defendant fails to establish that Larky improperly forced defendant to waive this fundamental right. Hence, we conclude that the circuit court did not err in denying defendant's motion to vacate the arbitration award. MCR 3.602(J)(1)(c); *Collins, supra* at 567.

Affirmed.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff