

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT S. WOLF,

Plaintiff-Appellee,

v

GLEN CLAFTON,

Defendant-Appellant.

UNPUBLISHED

June 8, 2001

No. 219269

Macomb Circuit Court

LC No. 97-000096-CH

Before: K. F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of the trial court giving effect to an arbitrator's decision regarding the title of real property. We reverse and remand.

The instant case arises from a dispute over real property located at 21515 Revere Street in St. Clair Shores, Michigan. The facts leading to the dispute are somewhat complicated and need not be stated for the purposes of this appeal. As relevant to this appeal, after plaintiff's ex-wife¹ filed suit to determine title to the property, the trial court referred the matter to arbitration. The arbitrator concluded that defendant and his wife owned the property. The trial court later granted plaintiff's motion for entry of judgment in accordance with the arbitration award.

On appeal, defendant raises several challenges to the trial court's judgment adopting the arbitration award. Defendant first argues that the trial court's judgment should be vacated because the arbitrator lacked subject-matter jurisdiction to determine fee ownership in the parties' dispute over real property.² We agree.

¹ In an order entered March 16, 1998, the trial court granted Joann Wolf's motion to substitute Robert Wolf as plaintiff in this matter.

² Defendant did not raise the issue of subject-matter jurisdiction in the lower court. However, a party may challenge whether an arbitrator had subject-matter jurisdiction for the first time on appeal. *McFerren v B & B Investment Group*, 233 Mich App 505, 512; 592 NW2d 782 (1999).

In *McFerren v B & B Investment Group*, 233 Mich App 505, 509-511; 592 NW2d 792 (1999), a panel of this Court concluded, after reviewing MCL 600.5005; MSA 27A.5005³ and relevant Michigan Supreme Court authority, that an arbitrator is precluded from determining fee ownership of real estate. This Court subsequently vacated the trial court's judgment because it was entered pursuant to the arbitrator's decision. *Id.* at 513. The parties concede that *McFerren, supra*, is controlling in the instant case because the issue of fee ownership of real estate was submitted to the arbitrator. Therefore we vacate the judgment of the trial court entered pursuant to the arbitrator's award and opinion. *Id.*

In light of our disposition of this issue, we need not address defendant's additional arguments on appeal.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Peter D. O'Connell

/s/ Jessica R. Cooper

³ MCL 600.5005; MSA 27A.5005, provides in pertinent part: "A submission to arbitration shall not be made respecting the claim of any person to any estate, in fee, or for life, in real estate"