

STATE OF MICHIGAN
COURT OF APPEALS

DREW PAGE LOUISELL,

Plaintiff-Appellee,

v

JOHN C. LOUISELL,

Defendant-Appellant.

UNPUBLISHED

April 20, 2004

No. 245281

Wayne Circuit Court

LC No. 01-128161-DM

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right, challenging an award of attorney fees and the inclusion of postjudgment enforcement language in the judgment of divorce in this divorce action involving binding arbitration. We reverse and remand.

Defendant asserts that the trial court erred in including postjudgment enforcement language in the judgment of divorce, because the arbitration agreement requires all disputes relating to the form and content of the judgment to be submitted to the arbitrator for decision. Contract interpretation is a question of law and is subject to de novo review. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

The order for binding domestic arbitration entered in this matter is clear and unambiguous and specifically encompasses the issue of attorney fees. It is well-recognized that “arbitration is a matter of contract.” *Rowry v Univ of Michigan*, 441 Mich 1, 10; 490 NW2d 305 (1992). The authority of an arbitrator is determined by the terms of the agreement. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 496; 475 NW2d 704 (1991). As such, the “parties’ contract is the law of the case[.]” *Id.* Hence, the interpretation of an arbitration agreement generally is governed by the same principles that apply to the interpretation of other types of contracts. *Amtower v William C Roney & Co (On Remand)*, 232 Mich App 226, 234; 590 NW2d 580 (1998).

The order for binding domestic arbitration is a valid contract; it complies with the requirements pertaining to the validity of contracts, *Rembert v Ryan’s Family Steak Houses, Inc*, 235 Mich App 118, 125; 596 NW2d 208 (1999), as well as the statutory requirements of MCL 600.5070 *et seq.*, governing domestic relations arbitration. The contract is clear that “the Arbitrator shall resolve any disputes as to form or content of the Judgment.” As the contract is binding upon the parties, so should the resultant arbitration award be binding. See, generally,

Arrow Overall Supply Co v Peloquin Enterprises, 414 Mich 95, 98; 323 NW2d 1 (1982). The proper role for the trial court was only to examine whether the arbitrator rendered an award that comported with the terms of the contract. See *Gordon Sel-Way*, *supra* at 496-497. The parties were obligated to refer this issue to the arbitrator for determination. The court should not have substituted its judgment for that of the arbitrator. *Id.* at 497.

Defendant also alleges that the trial court erred in including the enforcement language in the judgment of divorce when plaintiff's request for the wording was not timely. A trial court's decision to enforce, vacate, or modify an arbitration award is reviewed de novo. *Tokar v Tokar Est*, 258 Mich App 350, 352; 671 NW2d 139 (2003).

The order for binding domestic arbitration provides the required time frames for action by the parties if dissatisfied by or unclear about the award. The time frames contained in the arbitration award and order for binding domestic arbitration are consistent with the court rule governing arbitration. MCR 3.602(K)(1). The arbitrator issued her award to the parties on either October 9, 2002, or, at the latest, on October 11, 2002. There is no evidence in the lower court file, or presented by counsel, that a request for inclusion of the disputed language was made within the requisite time frame after the issuance of the award.

We also believe that plaintiff failed to properly move to modify, correct, or vacate the award under the procedures elucidated in MCR 3.602(J) and 3.602(K). Having elected to proceed with binding arbitration, the parties were required to proceed in accordance with their agreement for arbitration, as well as the applicable statutes and court rules. *Konal v Forlini*, 235 Mich App 69, 73; 596 NW2d 630 (1999). As such, the provision should not have been considered or included by the court.

Defendant further alleges that the trial court erred in "completing" the arbitration award by adding language without a timely or appropriate request for modification by plaintiff. We agree. Plaintiff failed to challenge the award in a timely manner or in conformance with the relevant statutory provision, MCL 600.5081, or court rule, MCR 3.602. Even if plaintiff had appropriately sought modification of the award to include the requested enforcement provision, "judicial review of arbitration awards is limited." *Konal*, *supra* at 74. MCR 3.602(K)(1)(c) permits a court to modify or correct an award if "the award is imperfect in a matter of form, not affecting the merits of the controversy." Here, the court went beyond mere form. As the enforcement language requested by plaintiff is not addressed in the award of the arbitrator and no error is clearly apparent on the face of the award, there existed no basis for modifying the award. Moreover, although the court indicated that it did not modify the award, but merely "completed" it, the statutes and court rules do not address "completing" an arbitration award. MCL 600.5070 *et seq.*; MCR 2.603. The trial court's only choice was to confirm, modify, or vacate. *Konal*, *supra* at 74.

Finally, defendant alleges that the trial court erred in awarding plaintiff additional attorney fees (beyond those awarded by the arbitrator) without making adequate findings of fact or conducting an evidentiary hearing. A trial court's decision to award attorney fees is reviewed for an abuse of discretion. *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 231 (2003).

We need not address defendant's argument regarding the court's failure to find facts or conduct an evidentiary hearing. Indeed, the trial court's order indicates that it awarded the

attorney fees based on plaintiff's attempt to add the additional enforcement language rejected in the instant opinion. The addition of the enforcement language was beyond the scope of the trial court's powers, and it follows that the corresponding award of attorney fees was also beyond the scope of the trial court's powers. Moreover, as noted, the arbitration agreement specifically entrusts the issue of attorney fees to the arbitrator. The court erred in making the additional attorney fee award.

Reversed and remanded for an entry of judgment in conformance with the arbitration award. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood