

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PENNEE ANN HIRN,  
Plaintiff-Appellant,

UNPUBLISHED  
April 12, 2002

v

JOHN B. HIRN, JR.,  
Defendant-Appellee.

No. 227224  
Oakland Circuit Court  
LC No. 98-603025-DM

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Before: Jansen, P.J., and Zahra and Meter, JJ.

PER CURIAM.

In this action for divorce, binding arbitration was ordered pursuant to the stipulation of the parties. Plaintiff appeals by right from a judgment of divorce that confirmed the arbitration award. We affirm.

I

The parties were married in May 1982 and plaintiff filed for divorce in February 1998. Two children were born of the marriage. The order for binding arbitration (“arbitration agreement”) specifically states that all issues raised by the pleadings would be placed in binding arbitration. Five separate arbitration hearings were conducted between March 30, 1999 and October 28, 1999. The arbitrator issued a three-page interim award on April 9, 1999, and an eleven-page final award on December 9, 1999. The trial court incorporated the arbitration award in the judgment of divorce entered on December 16, 1999.

The arbitrator awarded joint legal custody of the two children. Plaintiff was granted sole physical custody and defendant was granted substantial parenting time. Defendant was ordered to pay child support in the amount of \$325 a week. In regard to the property distribution, plaintiff was awarded the marital home, certain personal property, a 1989 Lincoln automobile and Regents stock. The parties had accumulated a great deal of debt and plaintiff was ordered to assume the debt obligations on credit cards issued by Comerica, Fleet Credit Card Services, First Visa and Capital One. Defendant was awarded a cabin located in the upper peninsula (with a \$2,500 lien in plaintiff’s favor), a 1994 Ford pick-up truck, snowmobiles and a trailer that were in his possession, his tools and other personal items. Defendant was also ordered to assume the debt obligations on credit cards issued by Capital One Visa, Chase Manhattan Shell, Discover, First Card, First Select, Providian and Sears.

On appeal, plaintiff raises a myriad of issues attacking the arbitrator and the arbitration award.<sup>1</sup> Plaintiff argues that the arbitrator refused to allow witnesses to be called and thus, failed to address certain material issues. Plaintiff also contends that the trial court erred in denying her request for a court reporter to be present at the hearings at her expense. Plaintiff further attacks some of the arbitrator's rulings, including his decision to not award alimony and the decision to not require defendant to pay for plaintiff's attorney fees.

## II

Procedurally, we note that plaintiff has failed to properly preserve and present the issues argued by her counsel during oral argument and subsequently adopted by our dissenting colleague. Plaintiff's pro per brief on appeal approaches incomprehensibility and is strewn with errors, most notably the haphazard offering of many repeated yet undeveloped allegations of error within each question presented on appeal. This "shotgun" approach to litigation constitutes a valid ground for dismissal. *Taylor v Milton*, 353 Mich 421, 423-424; 92 NW2d 57 (1958).

Compounding this error, none of the factual allegations asserted by plaintiff contain citations to the record, in violation of MCR 7.212(C)(7), leaving it for this Court to scour the record to find support for the factual bases of her allegations.<sup>2</sup> A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for the claim. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001); *In re Webb H Coe Marital & Residuary Trusts*, 233 Mich App 525, 537; 593 NW2d 190 (1999). Plaintiff further violated MCR 7.212(C)(7) by failing to include applicable standards of review and not specifying whether the issues had been preserved. Notwithstanding these serious procedural defects, we address some of the substantive aspects of plaintiff's appeal since our dissenting colleague concludes the award should be vacated.

## III

By its own terms, the arbitration agreement was to be controlled by the uniform arbitration act, MCL 600.5001 *et seq.* Because this case involves statutory arbitration, our review is governed by MCR 3.602. See MCL 600.5021. MCR 3.602(J)(1) provides:

On application of a party, the court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue

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<sup>1</sup> Plaintiff alleges many times over that the arbitration award was procured by corruption or fraud and that the arbitrator was biased against her. Plaintiff has failed to support these allegations with any evidence and has failed to properly present and preserve these issues. We therefore decline to consider them.

<sup>2</sup> Although the arbitration hearings were not transcribed, it is apparent from the attachments to the brief submitted by plaintiff that numerous pleadings and motions were filed and heard in the circuit court. These circuit court proceedings are referenced by plaintiff in her appeal brief but such references are without specific citation to the circuit court record.

means;

(b) there was evident partiality by an arbitrator, appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;

(c) the arbitrator exceeded his or her powers; or

(d) 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.

When a party challenges an arbitration award entered pursuant to the arbitration statute, a reviewing court has three options: (1) confirm the award, (2) vacate the award if obtained through fraud, duress, or other undue means, or (3) modify the award or correct errors that are apparent on the face of the award. *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001).

When considering whether any error is apparent on the face of the award,

[t]he proper role of the Court . . . is to examine whether the arbitrators have rendered an award which comports with the terms of the [arbitration agreement]. Furthermore, error, if any, must be . . . "so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise." [*Gordon Sel-Way, Inc, v Spence Bros, Inc*, 438 Mich 488, 496-497; 475 NW2d 704 (1991), quoting *DAIIE v Gavin*, 416 Mich 407, 443- 331 NW2d 418 (1982)].

Thus, our inquiry on this point is two-fold: (1) we must examine whether the award comports with the terms of the arbitration agreement; (2) if the award does not comport with the arbitration agreement, we must then determine whether this error is so egregious as to govern the award such that absent the error a substantially different result would have been likely. With these considerations in mind, we review the substantive aspects of plaintiff's appeal.

#### IV

We first address the argument found persuasive by the dissent - - that the face of the award evidences reversible error by the arbitrator because at page 2 of the final arbitration award the arbitrator states "[b]ecause this is arbitration and not litigation, the rules of evidence need not be adhered to closely." Plaintiff's counsel argued at oral argument that reversible error is evident on the face of the arbitration award because by failing to adhere closely to the rules of evidence the arbitrator exceeded the authority granted him by the arbitration agreement, which expressly mandates the use of the Michigan Rules of Evidence in the event evidence is taken during the arbitration proceedings. We find no merit in this argument.

Simply put, even if we were to assume that the arbitrator exceeded his authority by failing to closely adhere to the rules of evidence, plaintiff has utterly failed to demonstrate that

she was prejudiced by the arbitrator's conduct.<sup>3</sup> Plaintiff offers no evidence or argument that the arbitrator's failure to closely adhere to the rules of evidence resulted in the omission or admission of evidence without which a substantially different award would have been reached. *Gordon Sel-Way, supra*.

Plaintiff only argues that she subpoenaed a number of witnesses but the arbitrator declined to take testimony from them. The arbitrator's award addressed this issue, stating:

Plaintiff has alleged that the arbitrator failed to allow her to present testimony . . . However, as indicated above, five separate hearings have convened in this matter. During each of the scheduled hearings, plaintiff and defendant were afforded ample opportunity to present evidence and argument to the arbitrator . . . . The arbitrator has considered the arguments, testimony, reams of documentary evidence submitted by plaintiff, medical and psychological reports submitted by plaintiff, transcripts of referee hearings submitted by plaintiff, . . . and other relevant evidence . . . . The arbitrator is unaware of what additional evidence could be provided that would change the basic facts . . . .

It is clear the arbitrator concluded that the additional evidence proffered by plaintiff would have been cumulative. Nothing submitted by plaintiff on appeal suggests otherwise. Thus, we conclude there is no reversible error evident on the face of the arbitration award either because the arbitrator chose not to adhere closely to the Michigan Rules of Evidence or because the arbitrator elected to bring the proceedings to a close after five hearings without taking additional evidence from plaintiff's subpoenaed witnesses.

We also conclude that the trial court committed no error by failing to award plaintiff attorney fees. Attorney fees were precluded by the arbitration award and were not necessary to preserve plaintiff's ability to carry on her action. *Kurz v Kurz*, 178 Mich App 284, 297; 443 NW2d 782 (1989).

We also affirm the decision regarding alimony. Whether an alimony award is periodic or in-gross is an inquiry subject to the intent test. *Bonfiglio v Pring*, 202 Mich App 61, 64-65; 507

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<sup>3</sup> We note the arbitrator did not indicate the Michigan Rules of Evidence did not govern the method of presenting evidence in the arbitration hearings. Rather, the arbitrator noted that because arbitration is less formal than litigation he did not adhere closely to the formalities of these rules. A trial court's evidentiary rulings are not disturbed on appeal absent an abuse of discretion. *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 454; 633 NW2d 418 (2001). Thus, in most cases whether evidentiary rules are strictly or liberally applied is generally left to the discretion of the trial court. We see no reason to review evidentiary matters from arbitration proceedings more closely than they are reviewed from the trial court. However, because plaintiff has failed to demonstrate that a substantially different award would have entered had the arbitrator strictly adhered to the rules of evidence, we need not decide whether the arbitrator exceeded his authority by electing to loosen the formalities of the Michigan Rules of Evidence during these arbitration proceedings.

NW2d 759 (1993). Because the arbitrator made the decision regarding alimony, the arbitrator's intent controls. *Id.* at 65. The arbitrator here awarded alimony only as a guarantee that the parties would continue to pay the joint debts they were awarded. Thus, if one of the parties attempted to evade satisfaction of the debt, "any such obligation then due and owing . . . shall become in the nature of alimony." Otherwise, "neither party shall be entitled to alimony and alimony shall be forever barred." This language shows a clear intent to create non-modifiable alimony-in-gross, insofar as one of the parties fails to honor his or her respective joint debts. *Pinka v Pinka*, 206 Mich App 101, 103-104; 520 NW2d 371 (1994). Therefore, there was no clear error in refusing to modify this award. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

Plaintiff also alleges error with respect to not having a court reporter transcribe the proceedings. We note that a record is not normally taken during arbitration proceedings. Further, neither the uniform arbitration act, the applicable court rule, MCR 3.602, nor the arbitration agreement require that a record of the hearings was to be made in this case. Therefore, we do not find error in the rulings of both the arbitrator and the trial court to deny plaintiff's request to have a court reporter at the hearings. Indeed, a binding arbitrator's factual findings are not subject to appellate review. *Krist, supra*. Further, plaintiff's claims relating to the arbitrator's rulings, such as the award of alimony and attorney fees, and the distribution of the property and liabilities, are not issues subject to appellate review. *Gordon Sel-Way, supra* at 497 (the courts will not review the merits of an arbitrator's decision and may not substitute their judgment for that of an arbitrator).

Affirmed.

/s/ Brian K. Zahra

/s/ Patrick M. Meter