

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPHINE BRIGGS, under Power of Attorney
for JOSEPHINE NICOLAOU,

UNPUBLISHED
February 21, 2003

Plaintiff-Appellant,

V

THOMAS PERALTA, DENNIS A. JOHNSTON,
and PERALTA, JOHNSTON and KARAM, a
Michigan co-partnership,

No. 231285
Macomb Circuit Court
LC No. 98-002238-NM

Defendants-Appellees.

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

Plaintiff commenced this action to recover attorney fees from defendants, who represented Josephine Nicolaou in connection with a post-judgment challenge to the property division provisions of a divorce judgment between Ms. Nicolaou and her ex-husband, Eleftherios Nicolaou. The parties agreed to arbitrate the matter and the arbitration panel subsequently issued a decision in defendants' favor. Plaintiff moved to vacate the arbitration award. The trial court denied the motion, awarded defendants \$2,000 in attorney fees in connection with the motion, and dismissed the action. Plaintiff appeals as of right. We affirm in part and reverse in part.

Plaintiff contends that the trial court erred in denying her motion to vacate the arbitration award. Specifically, plaintiff contends that the arbitration panel "committed an error of law of such magnitude that they [sic] exceeded their authority." Indeed, a statutory arbitration award may be vacated if the arbitration panel exceeded its powers.¹ MCR 3.602(J)(1)(c). Arbitrators exceed their authority "whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law." *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). "The character or seriousness of an error of law which will invite judicial action to vacate an arbitration award . . . must be error so material or so substantial as to have governed the award, and but for which the award would have been

¹ Where, as here, the parties' arbitration agreement provides that judgment may be entered upon the arbitration award, the case involves "statutory arbitration" and is governed by MCL 600.5001, *et seq.* See . *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174-175; 550 NW2d 608 (1996).

substantially otherwise.” *Gavin, supra* at 443. We review de novo a trial court’s decision to enforce, vacate, or modify a statutory arbitration award. See *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 496-497; 475 NW2d 704 (1991).

Plaintiff challenges the arbitration panel’s failure to address all the issues raised in the complaint. Indeed, the arbitrators were asked to “determine the extent to which Plaintiff is entitled to recovery of attorney fees paid to Defendants pursuant to the claims alleged and more fully described in the Complaint filed by Plaintiff” However, the arbitration panel specifically found that the evidence did not establish “that there was any fraud or misrepresentation surrounding the execution of the Contingent Fee Agreement.” Accordingly, we do not believe that the arbitration panel failed to consider any of the issues raised in the complaint.

The gravamen of plaintiff’s complaint was a challenge to the reasonableness of defendants’ compensation pursuant to the contingent fee agreement. Courts may not enforce attorney fee agreements that are unethical under the rules of professional responsibility. *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 197; 650 NW2d 364 (2002). The relevant rule of professional responsibility, MRPC 1.5, states in pertinent part as follows:

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent. [See *Dep’t of Transportation v Randolph*, 461 Mich 757, 762; 610 NW2d 893 (2000).]

Here, although the arbitration panel did not cite any case law or rules, the panel’s factual findings suggest that it considered several of the MRPC 1.5(a) factors. Accordingly, we are not persuaded that the arbitration panel’s finding was contrary to the law.

We note that plaintiff also contends that the arbitration panel improperly relied on MCR 8.121, which presumes that a one-third contingent fee is “fair and reasonable” in a personal injury or wrongful death action. While MCR 8.121 is not directly relevant to the representation involved in the instant matter, it does not follow that the arbitration panel could not consider MCR 8.121. Regardless, it is far from clear that the arbitration panel placed significant emphasis on MCR 8.121.

We also reject plaintiff’s contention that the arbitration panel could not consider the appreciation in the stock market account. One of the MRPC 1.5(a) factors is the “results obtained.” MRPC 1.5(a)(4). While defendants received a relatively large fee, defendants’ efforts obtained a relatively large result. In fact, plaintiff’s net “result” ended up being very similar to the value of the stock market account when the action started. Although the appreciation in the stock market account is not attributable to defendants’ efforts, we believe that considering plaintiff’s net result was consistent with the application of MRPC 1.5(a)(4). Consequently, we conclude that the trial court did not err in denying plaintiff’s motion to vacate the arbitration panel’s award. *Gordon Sel-Way, supra* at 496-497.

Plaintiff also argues that the trial court erred in awarding defendants attorneys fees of \$2,000. We review a trial court’s decision to award attorney fees for an abuse of discretion.² *Schoensee v Bennett*, 228 Mich App 305, 314; 577 NW2d 915 (1998). It is well established that “attorney fees are generally not recoverable unless a statute, court rule, or common-law exception provides to the contrary.” *Id.* at 312. Here, defendants sought attorney fees because they were “wrongly sustained” as a result of plaintiff’s motion to vacate the arbitration award. Defendants did not, however, cite any authority in support of their request for attorney fees. Further, in granting defendants’ request, the trial court also failed to cite any authority. In the absence of any authority supporting the trial court’s award of attorney fees, we can only conclude that the award of attorney fees was an abuse of discretion. *Id.* at 312, 314-315.

Affirmed in part and reversed in part. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ William C. Whitbeck, C.J.
/s/ Richard Allen Griffin
/s/ Donald S. Owens

² “An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion.” *Schoensee, supra* at 314-315.