STATE OF MICHIGAN

COURT OF APPEALS

RONALD L. VANDERLAAN, M.D, Plaintiff-Appellee,	UNPUBLISHED July 9, 2009
v	No. 284678 Kent Circuit Court
MICHIGAN MEDICAL, P.C., ROBERT WOLYN, M.D., and ALLYN R. LEBSTER, Defendants-Appellants.	LC No. 07-013018-CD

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Defendants appeal by leave granted the trial court's order denying their motion for summary disposition under MCR 2.116(C)(7)(agreement to arbitrate). We affirm in part, reverse in part, and remand for further proceedings.

Plaintiff and defendants entered into a written employment agreement, which contained the following arbitration clause:

> If there is *any dispute between Employer and Employee arising under or relating in any manner to this Agreement*, such dispute shall be submitted to the Finance Committee for mediation. If such dispute remains unresolved after such mediation, then the Finance Committee shall report the results of its actions to the Board of Directors for review and such further action, if any, as the Board of Directors shall deem necessary. If such dispute remains unresolved after such mediation by the Finance Committee and review and action by the Board of Directors, then such dispute shall be resolved by binding arbitration pursuant to the rules for commercial arbitration of the American Arbitration Association, which arbitration shall be final and binding upon the parties and enforceable in a court of competent jurisdiction. . . .

Plaintiff averred that when he complained about an illegal and fraudulent billing practice and attempted to remedy the practice, defendants suspended him. He further claimed that defendants terminated his employment after he reported defendants' activity to the Inspector General of the United States.

Plaintiff brought a claim under the Whistle Blower's Protection Act, MCL 15.361 *et seq*. ("WPA"), and three tort claims: (1) tortious interference with advantageous business relations; (2) tortious interference with his contractual relations with Grand Valley Health Plan; and (3) intentional infliction of emotional distress. The trial court denied defendants' motion for summary disposition, concluding that the arbitration agreement did not cover plaintiff's claims.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Defendants argue that all of plaintiff's claims relate to his employment or his termination of employment, and therefore constitute disputes "arising under or relating in any manner" to the agreement. Defendants further assert that the arbitration clause was sufficiently specific.

In *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118; 596 NW2d 208 (1999), this Court determined that contracts between private parties that include an agreement to arbitrate statutory employment discrimination claims are enforceable. The *Rembert* Court noted that the discrimination statutes did not preclude predispute agreements to arbitrate these claims. *Id.* at 158. In holding that such agreements could be valid, the *Rembert* Court imposed two caveats: "that the agreement waives no substantive rights, and that the agreement affords fair procedures." *Id.* at 124. Regarding fair procedures, the *Rembert* Court listed five caveats: (1) *Clear notice to the employee that he is waiving the right to adjudicate discrimination claims in a judicial forum and opting instead to arbitrate these claims*; (2) the right to be represented by counsel; (3) a neutral arbitrator; (4) reasonable discovery; and (5) a fair arbitral hearing. *Id.* at 161-162.

In *Stewart v Fairlane Community Mental Health Ctr*, 225 Mich App 410, 421-422; 571 NW2d 542 (1997), this Court found no significant difference between statutory civil rights claims and claims brought pursuant to the WPA for purposes of arbitration agreements since they "protect similar statutorily recognized interests and deserve like treatment." Based on *Stewart*, we conclude that, for purposes of determining whether the WPA claim is subject to arbitration based on the employment agreement in this case, the WPA claim should be regarded in the same way that a statutory discrimination claim would be regarded.

Arslanian v Oakwood United Hosps, Inc, 240 Mich App 540; 618 NW2d 380 (2000), dealt with the arbitration of a grievance pursuant to a collective bargaining agreement. There, the issue was whether the plaintiff could bring a civil rights claim in circuit court following an unfavorable arbitration result. The *Arslanian* Court concluded that "because the union asserts control in the labor arbitration process and because the interests of the individual in enforcing statutory rights may be subordinated to the perceived greater interest of the collective bargaining unit, mandatory labor arbitration of civil rights complaints is inappropriate." *Id.* at 550. Nonetheless, relying on *Rembert*, the *Arslanian* Court went on to state that it would have found a right to pursue the statutory claim in any event based on deficient notice in the arbitration provision of the collective bargaining agreement:

> It was a deficiency in [notice], the lack of a "clear and unmistakable waiver," which led the Supreme Court in *Wright v Universal Maritime Service Corp*, 525 US 70; 119 S Ct 391; 142 L Ed 2d 361 (1998), to recently decline to reach the question whether a waiver provision contained in a collective bargaining

> agreement should be enforceable. *Id*., 119 S Ct 395, 397. There, the Court found that the union-negotiated arbitration clause at issue was "very general, providing for arbitration of 'matters under dispute,' . . . which could be understood to mean matters in dispute under the contract." *Id*., 119 S Ct 396. The Court noted that the "remainder of the contract contains no explicit incorporation of statutory antidiscrimination requirements." *Id*. Similarly, in this case the arbitration clause generally provides that an employee may grieve "an alleged violation of a specific article or working condition or section of this Agreement." Although the agreement does contain an antidiscrimination provision, it does not explicitly reference or incorporate statutory discrimination claims. Further, it is provided that an arbitrator appointed under the agreement is "empowered to rule only upon the interpretation and construction of the specific provisions of this contract and shall not be empowered to . . . change or modify any provision . . . or introduce any new material." We additionally find, therefore, that together these provisions do not constitute a clear and unmistakable waiver of the right to bring a statutory discrimination claim in court. Plaintiff was not on notice that by pursuing arbitration with the union he would lose this right. [*Id.* at 551-552.]

We conclude that the arbitration provision in the subject employment agreement did not constitute an effective waiver of plaintiff's right to pursue his WPA claim in the circuit court. The language "*any dispute between Employer and Employee arising under or relating in any manner to this Agreement*," is general.[1] While the language could be construed to mean any dispute relating in any way to plaintiff's employment with defendants, it could also be construed to mean that it pertained solely to disputes relating in any way to the terms of the agreement. The agreement dealt primarily with terms of employment such as compensation, benefits, duties, and termination for cause. There was no mention of a Whistleblower claim in this employment agreement. The document itself lacked any language addressing the WPA. The language did not constitute a "clear and unmistakable" waiver of the right to bring a statutory WPA claim in court.

The trial court also found that the tort claims were not covered by the Agreement and therefore could be pursued in circuit court. Unlike the WPA claim, these are not statutory claims and they all relate to plaintiff's suspension and termination. Thus, they are disputes that relate in some manner to the agreement. Contrary to plaintiff's argument, *Heckmann v Detroit Chief of Police*, 267 Mich App 480; 705 NW2d 689 (2005), overruled in part in *Brown v Mayor of Detroit*, 478 Mich 589; 734 NW2d 514 (2007), does not indicate that these claims should remain in circuit court. The *Heckmann* Court concluded that a claim for intentional infliction of emotional distress was properly dismissed due to a lack of "outrageous" conduct, but went on to

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[1] Defendants' reliance on *Panepucci v Honigman Miller Schwartz & Cohn, LLP*, 408 F Supp 2d 374 (ED Mich, 2005), and *Cherry v Wertheim Schroder & Co*, 868 F Supp 830 (D SC, 1994), for the proposition that the language in this employment agreement was sufficiently clear to require arbitration, is unavailing. Those courts did not apply *Rembert* or its requirement of "clear notice".

say that "to the extent that plaintiff can prove damages as a result of emotional distress causally related to a WPA violation, his exclusive remedy lies in the WPA." *Id*. at 499. In *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC,* 276 Mich App 146, 163; 742 NW2d 409 (2007), quoting *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 305-306; 690 NW2d 528 (2004), this Court indicated that bifurcation of claims is to be avoided. However, this policy is clarified in *Detroit Auto Inter-Insurance Exchange v Reck*, 90 Mich App 286, 290; 282 NW2d 292 (1979), in which this Court indicated that this non-bifurcation concept applies in the context of arbitration, not proceedings in circuit court: "It is to prevent this dissection of claims that we liberally construe arbitration clauses resolving all doubts about the arbitrability of an issue in favor of arbitration." Since arbitration is favored, we conclude that plaintiff's tort claims should be dismissed in favor of arbitration.

Affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens