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STATE OF MICHIGAN
COURT OF APPEALS

ANTONIA HOFFMAN, Plaintiff-Appellee,	UNPUBLISHED December 16, 2021
v	No. 356681 Wayne Circuit Court
JOSEPH HOFFMAN, Defendant-Appellant.	LC No. 19-110049-DO

Before: CAVANAGH, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right, challenging the trial court's order denying his objections to a domestic relations arbitration award. Defendant argues that the arbitrator exceeded his authority by acting beyond the material terms of the parties' arbitration agreement and contrary to controlling law. We affirm.

I. FACTS

This case arises from a divorce involving an arbitration proceeding. Plaintiff and defendant were married in June of 2012. Plaintiff filed for divorce in August of 2019. A few months later, plaintiff and defendant entered into a settlement agreement. Under that agreement, the parties settled most of the issues about division of property. One issue left unsettled, however, was how to divide a vacation property in Petoskey, Michigan (the Petoskey Property). At the time of the parties' divorce, only defendant and defendant's mother, Rose Hoffman, were on the deed to the Petoskey Property. The parties agreed to submit all issues regarding the Petoskey Property to arbitration. In their settlement agreement, the parties agreed that Rose would be treated as a party to the arbitration.

The parties entered into a binding arbitration agreement. Rose was not mentioned in the agreement. Only the parties, their attorneys, and the arbitrator signed the agreement. Under the agreement, the parties and the arbitrator "agree[d] to be guided by the statutes and case law of the State of Michigan during the arbitration process." The agreement gave the arbitrator authority to decide:

a. Division of personal property, including ancillary issues related thereto.

b. All issues regarding real property located at 9620 E. Mitchell St., Petoskey, Michigan.

Although there is no record of the arbitration proceedings, the arbitrator summarized the salient facts and testimony in his award. In June of 2015, Rose and defendant assumed title to the Petoskey Property as joint tenants with rights of survivorship. Defendant paid for the Petoskey Property using money provided by Rose.

Plaintiff claimed Rose loaned her and defendant money to buy the Petoskey Property for themselves. According to plaintiff, she and defendant bought the property for about $59,000, and closed on it in June of 2015. Plaintiff contended the plan was for Rose to remain on the title to the Petoskey Property until Rose was repaid. To corroborate her version of events, plaintiff presented evidence showing, just after closing on the property, defendant began paying Rose in periodic installments using funds from plaintiff's and defendant's joint checking account.

Defendant denied Rose loaned him and plaintiff money to buy the Petoskey Property. According to defendant, Rose was the actual purchaser of the Petoskey Property. Defendant admitted negotiating to buy the Petoskey Property, but claimed he was acting on Rose's behalf. His name was on the title to the Petoskey Property, defendant explained, only for "Probate Court purposes." Defendant admitted he paid $59,301 from the parties' joint checking account to Rose after closing on the Petoskey Property, but claimed this money was in repayment for several different loans Rose had given him years earlier. In total, defendant claimed he owed Rose $64,000, and that he started paying Rose back about eight months before closing on the Petoskey Property. Although Rose did not testify during the arbitration proceedings, her deposition testimony was admitted, corroborating defendant's version of events.

The arbitrator issued his award in April of 2020, accepting defendant's version of events. The arbitrator found: (1) Rose bought the Petoskey Property with defendant acting as her agent; (2) the money defendant paid to Rose was in repayment for unrelated premarital loans Rose gave defendant earlier; (3) defendant used the parties' joint checking account to make these payments; and (4) defendant paid Rose a total of about $64,000. On the basis of these findings, the arbitrator concluded that defendant was required to pay plaintiff half the amount of money he paid to Rose. This was because, the arbitrator reasoned, defendant used marital assets from the parties' joint checking account to pay the premarital debt. Thus, the arbitrator ruled defendant had to either pay $31,900.50 to plaintiff, or else refinance the Petoskey Property or the current marital home to remit this amount.

A little over a month later, defendant filed an objection to the arbitration award in the trial court. In his objection, defendant asked the trial court to vacate the arbitration award, arguing that the arbitrator exceeded his authority in granting the award. Defendant reasoned that whether defendant used marital assets to pay premarital debt was irrelevant to the Petoskey Property, and therefore, the arbitrator exceeded his authority under the arbitration agreement. Finding the arbitrator acted well within his authority to issue the award, the trial court declined to vacate the arbitration award. This appeal followed.

Defendant argues that the arbitrator exceeded his authority in contravention of MCL 600.5081(2)(c), and the trial court erred by declining to vacate the arbitrator's award. We disagree.

II. STANDARD OF REVIEW

We review de novo a trial court's ruling on a motion to vacate or modify an arbitration award. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009). We also review de novo whether an arbitrator has exceeded his or her authority. *Id*. at 672. Likewise, we review de novo the interpretation of a contract. *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005).

Judicial review of domestic relations arbitration awards is "extremely limited." *Washington*, 283 Mich App at 671. In reviewing an arbitration award, we "may not review the arbitrator's findings of fact, and any error of law must be discernible on the face of the award itself[.]" *Id*. at 672 (internal citations omitted). This means that "only a legal error that is evident without scrutiny of intermediate mental indicia will suffice to overturn an arbitration award." *Id*. (internal quotation marks and citation omitted). Also, "in order to vacate an arbitration award, any error of law must be 'so substantial that, but for the error, the award would have been substantially different.' " *Id*. at 672-673, quoting *Collins v Blue Cross Blue Shield of Mich*, 228 Mich App 560, 567; 579 NW2d 435 (1998), citing *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991).

III. ANALYSIS

A. PLAINTIFF'S PRESERVATION ARGUMENT

Before considering the merits of defendant's appeal, we consider and reject plaintiff's argument that defendant failed to properly preserve this issue for appeal because his objections to the arbitration award filed in the trial court were not served on the arbitrator, and thus, were untimely under MCL 600.5078(3). MCL 600.5078(3) states:

> An arbitrator under this chapter retains jurisdiction to correct errors or omissions in an award until the court confirms the award. Within 14 days after the award is issued, a party to the arbitration *may* file a motion to correct errors or omissions. The other party to the arbitration may respond to such a motion within 14 days after the motion is filed. The arbitrator shall issue a decision on the motion within 14 days after receipt of a response to the motion or, if a response is not filed, within 14 days after expiration of the response period. [MCL 600.5078(3) (emphasis added)].

"As a general rule, the word 'may' will not be treated as a word of command unless there is something in the context or subject matter of the act to indicate that it was used in such a sense." *Mull v Equitable Life Assurance Society of the United States*, 444 Mich 508, 519; 510 NW2d 184 (1994). Plaintiff has identified nothing in the context or subject matter of the domestic relations arbitration act (DRAA), MCL 600.5070 *et seq*., that suggests "may" as used in MCL 600.5078(3) should be treated as a command. Hence, plaintiff has failed to show that MCL 600.5078(3) requires a party to first file objections to an arbitration award with the arbitrator before filing a motion in the trial court to vacate the arbitrator's award. At the same time, plaintiff has identified no authority stating that a party must first properly file a motion to correct errors or omissions to preserve an issue with an arbitrator's award for appeal. Because plaintiff has not adequately

briefed this argument, we need not consider it. See *MOSES, Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006) ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned.").

B. ARBITRATOR'S AUTHORITY

A trial court may vacate a domestic relations arbitration award only under very limited circumstances, including if the "arbitrator exceeded his or her powers." MCL 600.5081(2)(c). "[A] party seeking to prove that a domestic relations arbitrator exceeded his or her authority must show that the arbitrator either (1) acted beyond the material terms of the arbitration agreement or (2) acted contrary to controlling law." *Washington*, 283 Mich App at 672.

1. ACTED BEYOND TERMS OF ARBITRATION AGREEMENT

Defendant first argues that the arbitrator exceeded his authority because he acted beyond the material terms of the arbitration agreement. The arbitration agreement vested the arbitrator with authority to "decide . . . [a]ll issues regarding real property located at 9620 E. Mitchel St., Petoskey, Michigan." Defendant argues that his use of the parties' joint checking account to pay premarital debt was not an issue regarding the Petoskey Property. Defendant contends the arbitrator had authority to decide only whether the Petoskey Property was marital or separate property. So, defendant argues, by deciding defendant owed plaintiff half the amount of the marital assets he used to pay his premarital debt, the arbitrator acted outside the material terms of the arbitration agreement. We disagree.

To determine the arbitrability of an issue, a court must consider whether the disputed issue is arguably within the arbitration clause and whether the dispute is expressly exempt from arbitration by the terms of the agreement. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 163; 742 NW2d 409 (2007) (citations omitted). Arbitration is a matter of contract. *City of Ferndale v Florence Cement Co*, 269 Mich App 452, 460; 712 NW2d 522 (2006). Therefore, when interpreting an arbitration agreement, this Court examines the language of the agreement "according to its plain and ordinary meaning." *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 507; 885 NW2d 861 (2016) (citation omitted). "[A] dictionary may be consulted to ascertain the plain and ordinary meaning of words or phrases used in the contract." *Auto Owners Ins Co v Seils*, 310 Mich App 132, 145; 871 NW2d 530 (2015). If an agreement leaves any doubts about the arbitrability of an issue, those doubts should be resolved in favor of arbitration. *Rooyakker*, 276 Mich App at 163 (citation omitted).

The question, then, is whether defendant's use of money from the parties' joint checking account to pay his premarital debt was an issue "regarding" the Petoskey Property. The arbitration agreement vested the arbitrator with authority to "decide . . . [a]ll issues regarding real property located at 9620 E. Mitchel St., Petoskey, Michigan." The word "regarding" is a preposition that means "with regard to;" "respecting;" or "concerning." *Random House Webster's College Dictionary* (1999), p 1108. And "concerning" means "relating to;" "regarding;" or "about." *Id.* at 274. In effect, the plain language of the arbitration agreement gave the arbitrator authority to consider all issues bearing at least some connection, or relationship, to the Petoskey Property.

The issue whether defendant used money from the parties' joint checking account to pay his premarital debt bore at least some connection with, or relationship to, the Petoskey Property.

As defendant points out, the parties expected the arbitrator to determine whether the Petoskey Property was marital or separate property. Consequently, the arbitrator had to determine what defendant was paying Rose for, i.e., whether defendant was paying Rose back for a loan to buy the Petoskey Property, or whether defendant was paying Rose back for earlier, unrelated loans. For that reason, defendant's payments to Rose from the parties' joint checking account was an issue bound together with whether the Petoskey Property was marital or separate property. The plain language of the arbitration agreement gave the arbitrator authority to decide this issue.

Defendant argues that even if the arbitrator had authority under the agreement to decide whether the payments were for the Petoskey Property or for other loans, the agreement still did not give the arbitrator the power to order the remedy he did, i.e., requiring defendant to pay plaintiff for his use of marital assets to pay his premarital debt. Again, we disagree.

As a general rule, if an arbitration clause is written in broad, comprehensive language to include all claims and disputes, an award is presumed to be within the scope of the arbitrator's authority absent express language to the contrary. See *Gordon Sel-Way*, 438 Mich at 497-498; *Rooyakker*, 276 Mich App at 163-164. Consider our Supreme Court's decision in *Gordon Sel-Way*. The parties in that case had a contract, and the contract gave an arbitrator the authority to resolve all claims arising out of, or relating to, the contract or its breach. *Gordon Sel-Way*, 438 Mich at 491, 498. The contract, however, did not say whether the arbitrator could award interest as a part of the damages for the contract's breach. *Id*. at 498. So, when the arbitrator awarded interest as a part of damages, the trial court declined to enforce the award, finding that the arbitrator had no contractual authority to award such damages in the absence of express language. *Id*. at 492, 494. Our Supreme Court reversed. *Id*. at 497, 501. Because the parties' arbitration clause was written in comprehensive language to include all claims and disputes, absent language to the contrary, our Supreme Court found the language afforded the arbitrator the authority to compute damages and to award interest. *Id*. at 497-498. The arbitration clause did not need to expressly give the arbitrator authority to do so. *Id*. at 498.

Like the arbitration clause in *Gordon Sel-Way*, the arbitration clause at issue here was written in broad, comprehensive language. The clause gave the arbitrator the authority to decide all issues regarding the Petoskey Property, and did not limit the type of remedy the arbitrator could provide. As a result, in absence of express language to the contrary, we conclude that the arbitrator's award was within his authority to grant.

Defendant next argues that the arbitrator acted beyond the material terms of the agreement because his award encumbered Rose's interest in the Petoskey Property. Defendant points out that Rose never agreed, on the record, to be a party to the agreement, and she did not sign either the settlement agreement or the arbitration agreement. Defendant also points out the arbitration agreement stated: "The Arbitrator's powers and duties are outlined in this written Arbitration agreement that must be signed by all parties prior to the Arbitration commencing[.]"

Defendant's argument is beside the point. The arbitration award did not affect Rose's property rights. The arbitrator found Rose owned an interest in the Petoskey Property as a joint tenant with a right of survivorship, consistent with her and defendant's deed to the Petoskey Property. Plus, even if the arbitration award had encumbered her interest, this would not have meant the arbitrator acted beyond the terms of the arbitration agreement. First, the parties'

settlement agreement stated that Rose was to be treated as if she were a party to the arbitration.[1] Second, in the context of arbitration, the explicit agreement of all persons interested in a dispute is unnecessary; only the agreement of the parties to be compelled to arbitrate is required to render the agreement binding. See *Rooyakker*, 276 Mich App at 163 (holding that arbitrator had authority to resolve the plaintiffs' claims even if they involve nonparties to the arbitration agreement); see also *Hetrick v Friedman*, 237 Mich App 264, 267; 602 NW2d 603 (1999), disagreed with on other grounds by *Wold Architects & Engineers v Strat*, 474 Mich 223, 236; 713 NW2d 750 (2006) (holding that arbitration agreement was valid even though a party had not signed the agreement). Rose was not compelled to arbitrate, so her explicit assent to the arbitration agreement was unnecessary.

Defendant also argues that the arbitrator's rationale in reaching his conclusion was internally inconsistent. Even if this were true, it would not be sufficient grounds to vacate the arbitrator's award. There are only "four very limited circumstances under which a reviewing court may vacate a domestic relations arbitration award[.]" *Washington*, 283 Mich App at 671-672, citing MCL 600.5081(2). An arbitrator's award being internally inconsistent is not one of those circumstances, unless the internal inconsistency caused the arbitrator to exceed his contractual authority. But here, none of the alleged inconsistencies in the arbitrator's award caused him to exceed his authority. Equally important, this Court does not review the "arbitrator's mental path leading to [the] award." *Washington*, 283 Mich App at 672 (quotation marks and citations omitted; alteration in original).

2. ACTED CONTRARY TO CONTROLLING LAW

Next, defendant argues, by ordering defendant to pay plaintiff half the value of the marital assets he used to pay his premarital debt, and ordering plaintiff to quit claim her interest in the Petoskey Property to defendant, the arbitrator acted contrary to controlling law. See *id*. Defendant raises various arguments to support this contention.

First and foremost, defendant again argues that the arbitrator's award encumbered Rose's property interests. Specifically, defendant contends it is contrary to controlling law to affect the property interests of a nonparty to arbitration. This argument lacks merit for the same reasons already discussed. Assuming for the sake of argument it would be contrary to controlling law for an arbitrator to affect the property interests of a nonparty, the arbitrator's award had no effect on Rose's property rights. As already stated, in the context of arbitration, the agreement of all persons interested in a dispute is not necessary; only the agreement of the parties to be compelled to

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[1] Defendant argues the settlement agreement is void because it does not satisfy the statute of frauds, MCL 566.132. Even if the statute of frauds were applicable to the settlement agreement, the settlement agreement was reduced to writing and signed by both parties. Although the settlement agreement was dictated by a court reporter, defendant has failed to explain why this would be insufficient to satisfy the statute of frauds. "If a party fails to adequately brief a position, or support a claim with authority, it is abandoned." *MOSES, Inc*, 270 Mich App at 417. Therefore, we decline to consider this argument.

arbitrate is required to render the agreement binding. See *Rooyakker*, 276 Mich App at 163; see also *Hetrick*, 237 Mich App at 267.

Second, defendant argues that the arbitrator erred by ordering plaintiff to quit claim her interest in the Petoskey Property to defendant because plaintiff had no interest in the Petoskey Property. But even if plaintiff had no interest in the Petoskey Property, and the arbitrator erred by ordering plaintiff to give defendant a quit claim deed, this would not be grounds to vacate the arbitrator's award.[2] An award will be vacated when, but for an error, the arbitrator would have issued a substantially different award. *Gordon Sel-Way*, 438 Mich at 497; *Saveski v Tiseo Architects*, *Inc*, 261 Mich App 553, 555; 682 NW2d 542 (2004). The arbitrator's error, if any, made no difference to the final award. After all, if plaintiff had no immediate interest in the Petoskey Property, requiring her to give a quit claim deed to defendant would have no effect on defendant's or Rose's interest in the property.[3] At the same time, even if plaintiff were not required to give defendant a quit claim deed, defendant would still owe plaintiff $31,900.50.

Third, defendant argues that the arbitrator's award was inequitable, unjust, and unreasonable under MCL 552.19. Under MCL 552.19, a "court may divide all property that came 'to either party by reason of the marriage[.]' " *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997). MCL 552.19 states:

> Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.

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[2] We acknowledge that, technically, plaintiff could have a dower interest in properties of defendant. Specifically, as recognized in *In re Stroh Estate*, 151 Mich App 513, 516; 392 NW2d 192 (1986) (citations omitted):

> The law protects the right of dower. No contract of sale or conveyance by a husband without his wife's signature will operate to divest her of her dower. Notwithstanding a conveyance by a husband in which the wife did not join, the husband is considered so seized of the premises as to entitle the wife to dower.

See also MCL 558.1 ("The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of ⅓ part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof."). As such, the arbitrator's inclusion of the requirement that plaintiff quit claim her possible dower interest in the property to defendant was beneficial to defendant as protective of his rights.

[3] To the extent that defendant suggests the arbitration award required Rose to give plaintiff a quit claim deed, this suggestion is baseless. There is nothing in the arbitration award stating as such.

In dividing property that came to either party because of the marriage, the court must do so in a manner that is equitable in light of all the circumstances. *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010).

Though defendant's argument is difficult to decipher, defendant appears to suggest the arbitrator's division of property was inequitable because defendant did not have an opportunity to present evidence of plaintiff's use of marital assets to pay her premarital debts. This argument lacks merit. To begin, there is nothing in the record below indicating plaintiff used marital assets to pay off her own premarital debt. And even if there were, there is nothing to suggest plaintiff's use of marital assets for this purpose was related to the Petoskey Property. Hence, this issue would have been outside of the arbitrator's authority and is irrelevant. Further, whether the arbitrator's award was equitable under the circumstances is beyond the scope of this Court's review. "Once [this Court is] satisfied that the arbitrator applied the controlling law, [this Court's] review is complete absent some error appearing on the face of the award." *Washington*, 283 Mich App at 674. There is nothing to suggest the arbitrator failed to apply Michigan law when fashioning his award, and there is no error on the face of the award.

In summary, we agree with the trial court that the arbitrator did not exceed his authority in contravention of MCL 600.5081(2)(c), and thus, defendant's objections to the arbitration award are without merit.

Affirmed. Plaintiff is entitled to costs as the prevailing party. See MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Michael J. Kelly