

STATE OF MICHIGAN
COURT OF APPEALS

JAMES D. COMPO, INC.,

Plaintiff-Appellee,

v

RICHARD F. TREVIS and SARA M. TREVIS,

Defendants-Appellants.

UNPUBLISHED
December 4, 2012

No. 305112
Oakland Circuit Court
LC No. 2010-115726-CZ

Before: WILDER, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Defendants appeal as of right an order granting plaintiff's motion to vacate the arbitration award. We reverse and remand for an entry of the arbitration award.¹

Defendants first argue that the trial court erred when it vacated the arbitration award on the ground that the arbitrator exceeded her powers by failing to apply the statute of limitations provided in MCL 600.5839(1). Specifically, defendants argue that the trial court erred because that particular statute of limitations was inapplicable to defendants' breach of contract claim. We agree.

"This Court reviews de novo a trial court's decision to enforce, vacate, or modify an arbitration award." *City of Ann Arbor v AFSCME Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009). "Judicial review of an arbitrator's decision is narrowly circumscribed. A court may not review an arbitrator's factual findings or decision on the merits." *Id.* (internal citation omitted). "[A] reviewing court's ability to review an award is restricted to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record." *Dohanyos v Detrex Corp*, 217 Mich App 171, 175-176; 550 NW2d 608 (1996). Thus, this Court reviews only for "the kind of legal error that is evident without scrutiny of intermediate mental indicia."

¹ On appeal, plaintiff challenges this Court's jurisdiction to address the present matter. Because defendants are appealing from a final order, i.e., the order vacating the arbitration award and granting summary disposition, defendants properly appealed to this Court as a final order is appealable by right. MCR 7.202(6)(a)(i); MCR 7.203(A)(1).

Detroit Auto Inter-Ins Exch v Gavin, 416 Mich 407, 429; 331 NW2d 418 (1982). Further, “[t]his standard precludes review on the basis that the award was against the great weight of the evidence or that it was not supported by substantial evidence.” *Donegan v Mich Mut Ins Co*, 151 Mich App 540, 549; 391 NW2d 403 (1986).

Under MCR 3.602(J)(2)(c), a trial court has the authority to vacate an arbitration award if the “arbitrator exceeded his or her powers.” Arbitrators exceed their powers by acting “beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law.” *Gavin*, 416 Mich at 434. “[W]here it clearly appears on the face of the award or the reasons for the decision as stated, being substantially a part of the award, that the arbitrators through an error in law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made, the award and decision will be set aside.” *Id.* at 443, quoting *Howe v Patrons’ Mut Fire Ins Co of Mich*, 216 Mich 560, 570; 185 NW 864 (1921). Thus, “[t]he character or seriousness of an error of law which will invite judicial action to vacate an arbitration award under the formula . . . must be error so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise.” *Id.* “By narrowing the grounds upon which an arbitration decision may be invaded, the court rules preserve the efficiency and reliability of arbitration as an expedited, efficient, and informal means of private dispute resolution.” *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991).

After the arbitrator rejected plaintiff’s claim that the six-year statute of limitations set forth in MCL 600.5839(1)(a) barred defendants’ claim, plaintiff brought this same argument to the circuit court. However, the Supreme Court has recently concluded “that MCL 600.5839(1) is limited to tort actions. It does not apply to breach of contract actions.” *Miller-Davis Co v Ahrens Constr, Inc*, 489 Mich 355, 371; 802 NW2d 33 (2011). Thus, because the present dispute concerns a breach of contract claim, not a tort claim, the arbitrator did not make a substantial legal error by finding that MCL 600.5839(1) did not bar defendants’ claim. Accordingly, the trial court erred in vacating the arbitration award on the ground that MCL 600.5839 barred defendants’ claim.

On appeal, plaintiff, however, argues that there was an alternative ground for finding defendants’ claim untimely because, although distinct from MCL 600.5839, the applicable statute of limitations for breach of contract found in MCL 600.5807(8) was six years also. However, no error is evident from the face of the arbitration award. There is no separate record indicating the arbitrator’s findings of fact and law.² Moreover, that six-year limitations period is not absolute because other statutory provisions, see MCL 600.5855, allow for the tolling of that period. Thus, even if it was evident that defendants’ claim was filed after six years from when

² In its decision, the arbitrator did not provide the parties a formal opinion regarding the merits of defendants’ claim. But rather, the arbitrator provided the parties a “Standard Award,” which means that a decision was given without the accompaniment of analysis or reasoning supporting that decision.

any breach accrued, other facts could nonetheless make the claim timely, which leads us to the next issue.

In vacating the arbitration award, the trial court noted that “it is simply not ‘feasible’ that the arbitrator’s award could be ‘explained’ on” the basis of fraudulent concealment, MCL 600.5855.³ Defendants argue that the trial court erred when it concluded as such. We agree.

Again, there is nothing on the face of the award indicating that the arbitrator made any error. The trial court delved into an analysis of whether the arbitrator’s award was supported by substantial evidence, despite the fact that a reviewing court may not review an arbitrator’s factual findings or decision on the merits. *Port Huron Area Sch Dist v Port Huron Ed Ass’n*, 426 Mich 143, 150; 393 NW2d 811 (1986); *Krist v Krist*, 246 Mich App 59, 66; 631 NW2d 523 (2001). As such, the trial court erred when it made factual determinations and vacated the award based on those determinations.

Because we conclude that the trial court erred in vacating the arbitration award, we need not address defendants’ remaining argument related to whether an arbitrator has any discretion when it comes to applying a statute of limitations.

Reversed and remanded for an entry of the arbitration award. We do not retain jurisdiction. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra

³ MCL 600.5855: “If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.”