STATE OF MICHIGAN

COURT OF APPEALS

ELISABETA SOCIANU,

Plaintiff-Appellee,

v

CHRISTIAN SOCIANU,

Defendant-Appellant.

UNPUBLISHED
January 19, 2006

No. 256590
Macomb Circuit Court
LC No. 2002-007465-DO

Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right a consent judgment of divorce entered in accordance with an arbitration award. We reverse.

Plaintiff filed for divorce in December 2002. In September 2003, trial was adjourned and the matter was "scheduled for one-attorney mediation with Attorney Lori Henderson within thirty days from the date of this order." On November 3, 2003, an order was entered that appointed Lori Henderson the "binding arbitrator with regard to the division of personal property." On November 20, 2003, a stipulated order to adjourn trial was entered which indicated that the parties had agreed to arbitrate the matter. A trial date of January 30, 2004, was scheduled. Arbitration hearings were conducted on November 11, 2003, and November 25, 2003. On January 20, 2004, a stipulated order to adjourn the trial "due to continued arbitration" was entered. The order provided that the parties were in the middle of arbitration proceedings and trial on January 30, 2004, would be untimely so trial was adjourned to a future date. Another arbitration hearing was conducted on February 10, 2004.

On February 13, 2004, defendant moved for a trial date and to dismiss the arbitration. Defendant argued that Henderson was appointed, by order, as arbitrator over the division of personal property only and defendant requested that the court direct Henderson to issue an arbitration award in conformity with that order. Defendant also requested that a trial date be set for resolution of the remaining issues. At the hearing on the motion, the trial court held that, apparently because the parties participated in the arbitration hearings, it was their intent to arbitrate the entire matter, not just the personal property issues as ordered by the court. The court further noted that the parties inadvertently failed to submit an order to the court regarding arbitration that was previously signed and, thus, ordered that it be entered simultaneously with the order denying defendant's motion to dismiss. This previously signed order was the

acknowledgement, mandated by MCL 600.5072, that the parties were informed regarding the voluntary, binding, and general nature of arbitration. See MCL 600.5072.

On May 13, 2004, plaintiff moved for entry of a proposed consent judgment of divorce which incorporated the April 5, 2004, arbitration report and award. Defendant filed a response in opposition to the entry of consent judgment, arguing that there was no arbitration agreement between the parties that submitted the entire marital estate to arbitration. Defendant admitted that he agreed to arbitrate the issue of personal property distribution, but argued that the arbitration opinion and award addressed issues outside the scope of the arbitrator's authority, specifically the parties' real property and closely held corporation. At the hearing on the motion, the trial court rejected defendant's argument after finding, again, that the clear intent of the parties was that the whole matter be resolved by arbitration. Therefore, the court granted the motion for entry of the proposed consent judgment of divorce, and the judgment was entered. This appeal followed.

Defendant argues that the consent judgment of divorce must be vacated because it is predicated on an invalid arbitration award. We agree and conclude that the trial court abused its discretion when it granted the motion for entry of the proposed consent judgment of divorce. See *Harvey v Harvey*, 257 Mich App 278, 283; 668 NW2d 187 (2003).

The domestic relations arbitration act (DRAA), MCL 600.5070 *et seq*., is a specific and comprehensive statutory scheme that provides for and governs arbitration in domestic relations matters. *Harvey*, *supra* at 285. Specifically, MCL 600.5071 provides:

> Parties to an action for divorce, annulment, separate maintenance, or child support, custody, or parenting time, or to a postjudgment proceeding related to such an action, may stipulate to binding arbitration by a signed agreement that specifically provides for an award with respect to 1 or more of the following issues:
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> (a) Real and personal property.
> (b) Child custody.
> (c) Child support, subject to the restrictions and requirements in other law and court rule as provided in this act.
> (d) Parenting time.
> (e) Spousal support.
> (f) Costs, expenses, and attorney fees.
> (g) Enforceability of prenuptial and postnuptial agreements.
> (h) Allocation of the parties' responsibility for debt as between the parties.
> (i) Other contested domestic relations matters.

Defendant argued in the trial court, and does so on appeal, that the arbitration award addressed issues outside the scope of the arbitrator's authority.

Pursuant to MCL 600.5074, the scope of the arbitration, and thereby the appointed arbitrator's authority, is derived from the arbitration agreement. Particularly, MCL 600.5074(1) provides that "[a]n arbitrator appointed under this chapter shall hear and make an award on each issue submitted for arbitration under the arbitration agreement subject to the provisions of the agreement." Accordingly, to determine whether the arbitrator exceeded her power, review of the "signed agreement that specifically provides for an award with respect to 1 or more of the following issues . . . " is required. See MCL 600.5071. Therein lies the problem.

Defendant argues that there is no such arbitration agreement. In the alternative, he argues, if the November 3, 2003, order entered by the trial court appointing the arbitrator "with regard to the division of personal property" is considered an arbitration agreement, then the arbitrator exceeded her authority by considering the division of any marital estate asset other than personal property. Plaintiff, on the other hand, argues that the arbitration order limiting arbitration to personal property was drafted in error because "both parties intended that the arbitration was to include all of the marital property." In the alternative, plaintiff argues, defendant should be deemed to have waived his rights under the DRAA, i.e., "waived any rights regarding exclusion from arbitration," because he participated in the arbitration hearings. See *Staple v Staple*, 241 Mich App 562, 568; 616 NW2d 219 (2000).

We agree with defendant. The parties did not execute a written arbitration agreement as required by the DRAA, they merely obtained a court order referring the dispute to arbitration. Judicial construction of statutory language that is clear and unambiguous is not permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Here, MCL 600.5071 clearly and unambiguously provides that a matter may be submitted to arbitration only by a "signed agreement that specifically provides for an award with respect to 1 or more of the following issues . . . ." And, MCL 600.5074(1) mandates that the arbitrator "hear and make an award on each issue submitted for arbitration under the arbitration agreement subject to the provisions of the agreement." The legislative intent is clear—a written, signed agreement to arbitrate particular issues of dispute must be entered into between the parties before binding arbitration commences. Absent such agreement, the arbitrator is without authority to decide any contested issue and cannot render a binding award. Because the parties did not enter into a written arbitration agreement, the trial court abused its discretion in entering a consent judgment of divorce predicated on the arbitrator's "award."

Further, plaintiff's argument that these mandatory statutory requirements can be waived is without merit. Plaintiff relies on *Staple*, *supra*, in support of her argument but that case is wholly inapposite. There, the issue was whether a party to a divorce could voluntarily waive her statutory right to petition for modification of an alimony provision contained in the divorce judgment. See MCL 552.28. This court answered in the affirmative. *Staple*, *supra* at 569. However, in the present case, whether a party can waive a statutory right is not at issue. The issue here involves a statutory *requirement*, particularly that arbitration proceed in accordance with the terms of a written, signed arbitration agreement. We also reject plaintiff's attempt to characterize the court's order submitting the matter to arbitration as an "arbitration agreement." The order clearly is not such a contract.

In sum, the parties failed to execute a written arbitration agreement as required by MCL 600.5071, thus the arbitrator had no authority to issue an "award" on any of the contested issues and the trial court abused its discretion when it entered the consent judgment of divorce that was

predicated on the "arbitration award." In light of our resolution of this dispositive issue in defendant's favor, we need not address his other issues on appeal.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood