

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

STEVEN BURDA,

Appellant

v.

ALLA KORENMAN F/K/A ALLA BURDA

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3401 EDA 2012

Appeal from the Order Entered December 6, 2012
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 2010-26928

STEVEN BURDA,

Appellant

v.

ALLA KORENMAN F/K/A ALLA BURDA

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 315 EDA 2013

Appeal from the Order Entered December 13, 2012
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 2010-26928

BEFORE: BOWES, J., DONOHUE, J., and OTT, J.

MEMORANDUM BY OTT, J.

FILED JANUARY 15, 2014

Steven Burda, *pro se*, brings this consolidated appeal from the order entered on December 6, 2012, and the "corrective order" entered on

December 13, 2012,¹ in the Court of Common Pleas of Montgomery County, dismissing his petition to vacate the final arbitration award of September 4, 2012, and his petition for modification or correction of the final arbitration award of September 4, 2012.² This appeal arises from Burda's divorce action, during the course of which the parties agreed and contracted to submit economic claims in the pending divorce to binding common law arbitration. Burda contends he is entitled to a new trial or a remand for correction or modification of the arbitration award entered in this case. Based upon the following, we affirm.

The trial court has aptly summarized the background of this case, as follows:

¹ The court's December 13, 2012 "corrective order" reiterated the December 6th order and added the dismissal of Burda's petition to vacate the final arbitration award to the court's ruling, since mention of that petition had been inadvertently omitted from the body of the December 6th order, although it was listed in the caption of that order.

² Normally, an order denying a petition to vacate an arbitration award must be confirmed by the trial court and reduced to judgment in order to be final for purposes of appeal. ***See Seay v. Prudential Property & Casualty Insurance Company***, 543 A.2d 1166 (Pa. Super. 1988), *appeal dismissed*, 565 A.2d 159 (Pa. 1989) (stating order confirming arbitration award as well as entry of judgment are prerequisites to appeal). Here, however, the parties' arbitration agreement states, in relevant part: "**No confirmation of the Award by the Court shall be needed or required.**" The Award shall be fully enforceable as any other Agreement of the parties under the Divorce Code of 1980, as amended[.]" Agreement to Arbitrate, ¶7(a) (emphasis added). The agreement also allowed the final arbitration award to be incorporated into the final decree in divorce, ***see id.***, which was done in this case. ***See*** Divorce Decree, 9/14/2012.

[Burda] and [Alla Korenman] were married on March 15, 2008. [Burda] filed a Divorce Complaint in Montgomery County on September 10, 2010. [The trial court] issued a divorce decree dated September 14, 2012, which incorporated an arbitration award issued by Arbitrator Mary Cushing Doherty, Esquire, on September 4, 2012.

The parties entered into an Arbitration Agreement in which they agreed to be bound by the rules of common law arbitration. See Arbitration Agreement, ¶1.a.

[Burda] received notice of the arbitration award on September 5, 2012. (N.T., 12/6/12, p. 30). [Thereafter, the arbitration award was incorporated into the parties' divorce decree, which was filed on September 14, 2012.]

On October 4, 2012, [Burda] filed two motions. The first was a Petition to Vacate Arbitration Award. The second was a Petition to Modify or Correct Arbitration Award. [The motions were filed within thirty days of the arbitration award, in accordance with the arbitration agreement. **See** Arbitration Agreement, ¶7(e).]

On December 6, 2012, [the trial court] held a hearing regarding, *inter alia*, [Burda's] Petition to Vacate Arbitration Award and [Burda's] Petition to Modify or Correct Arbitration Award. [The trial court] entered an Order on December 6, 2012 that, *inter alia*, denied [Burda's] request to vacate or modify/correct the arbitration award.

Trial Court Opinion, 2/8/2013, at 1–2. Following the denial of his petitions, Burda filed a timely appeal.³

³ On December 28, 2012, the Superior Court Central Legal Staff issued an Order directing Burda to show cause as to the finality of the December 6th order, since “[i]t is unclear from the trial court docket if the December 6th order is the final order regarding the outstanding economic claims in the parties’ divorce.” Order, 12/28/2012. Burda responded that the December 6, 2012 order was a final disposition of the parties’ economic claims. We agree. While the trial court’s orders of December 6th and December 13th (Footnote Continued Next Page)

Burda has framed the following issue for this Court's review:

Is [Burda] entitled to a new trial or [to have this case] be sent back to the arbitrat[or] to correct or modify the Arbitration Award when, applying the following 42 Pa.C.S. § 7315(a)(1) and 42 Pa.C.S. § 7315(a)(2) and 42 Pa.C.S. § 7315(a)(3), 42 Pa.C.S. § 7315(c), 42 Pa.C.S. § 7314(a)(1)(ii) and 42 Pa.C.S. § 7314(a)(1)(iii) and 42 Pa.C.S. § 7314(a)(1)(v) 42 Pa.C.S. § 7314(b) and 42 Pa.C.S. § 7314(c), 42 Pa.C.S. § 7319(1), 42 Pa.C.S. § 7341, 42 Pa.C.S. § 742, Section 7(e) of the Arbitration Agreement (filed with Petitions on 10/04/2012) and relevant lower court dockets histories on case 2010-26928, where the trial court abused its discretion and/or misapplied the law by omitting, ignoring or failing to abide by the law/statutes, arbitration agreement section 7(e), or both?

Burda's Brief at 10.^{4, 5}

As the parties in this case agreed to submit their economic claims to common law arbitration,⁶ we review the trial court's decision for an abuse of

(Footnote Continued) _____

both provided that attorney fees awarded to Alla Korenman would be determined at a later date, the orders were final as to the parties' economic issues, as well as the issue of entitlement to attorney fees. In addition, both orders specified: "As the matters before the court have been resolved, Court Administrator is directed to remove same from the active inventory of the undersigned." Orders, 12/6/2012 and 12/13/2012.

⁴ Burda timely complied with the directive of the trial court to file a statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b).

⁵ The argument section of the brief filed by Burda simply restates the questions listed in the concise statement, without further discussion. While such approach is not consistent with Pa.R.A.P. 2119, given the expression of the questions, meaningful review has not been hindered so as to warrant dismissal of the appeal.

⁶ **See** Agreement to Arbitrate, ¶1(a) ("The parties submit to binding common law arbitration in accordance with the terms of the Agreement.").

discretion or an error of law. **See *Bridges PBT v. Chatta***, 821 A.2d 590, 592 (Pa. Super. 2003) (citation omitted), *appeal denied*, 829 A.2d 310 (Pa. 2003). In this regard,

[t]he review of a common law arbitration award is narrowly circumscribed. This is because

the law favors non-judicial dispute resolution that the parties have agreed to. Alternate dispute resolution is economical in terms of time, expenditure of judicial resources and transactional costs. Limited judicial review also imposes finality in a contested matter. To permit anything but limited judicial review defeats the purpose of ... arbitration.

The award of an arbitrator in a nonjudicial arbitration ... is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

Furthermore, an appellant "bears the burden to establish both the underlying irregularity and the resulting inequity by 'clear, precise and indubitable evidence.'" "In this context, irregularity refers to the process employed in reaching the result of the arbitration, not the result itself." A cognizable irregularity may appear in the conduct of either the arbitrators or the parties. Our Supreme Court has stated that the phrase "other irregularity" in the process employed imports "such bad faith, ignorance of the law and indifference to the justice of the result" as would cause a court to vacate an arbitration award.

F.J. Busse Co. v. Zipporah, L.P., 879 A.2d 809, 811 (Pa. Super. 2005) (citations and footnote omitted) (holding error of law by the arbitrators is not a basis upon which a trial court, which is reviewing an arbitration

decision, may modify that decision), *appeal denied*, 897 A.2d 457 (Pa. 2006). **See also** 42 Pa.C.S. § 7341.⁷

Upon careful examination of the record, the transcript of the December 6, 2012 hearing, the brief filed by Burda in support of this appeal, and the trial court opinion, we find no error of law or abuse of discretion committed by the trial court. We agree with the court that none of the

⁷ Section 7341, "Common law arbitration," specifically provides:

The award of an arbitrator in a nonjudicial arbitration which is not subject to Subchapter A (relating to statutory arbitration) or a similar statute regulating nonjudicial arbitration proceedings ***is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.***

42 Pa.C.S. § 7341 (emphasis supplied). Furthermore the parties' Arbitration Agreement provided:

The Award of the Arbitrator shall be binding upon the parties and not appealable except for the following:

- i. Denial of a hearing to a party; or
- ii. Fraud, misconduct or corruption which caused the rendition of an unjust, inequitable or unconscionable Award.
- iii. (Note the statutory basis for appeal due to evident miscalculations of figures or evident mistakes in the description of any property referred to in the Award, does not apply here, due to reconsideration allowance.)

Agreement to Arbitrate, ¶7(d).

arguments advanced by Burda — including, that the arbitrator conferred by telephone with the parties' attorneys, without him; that the arbitrator made miscalculations; that the arbitrator exceeded her power; and that the arbitrator misapplied the law — present grounds upon which to vacate or modify the arbitration award.

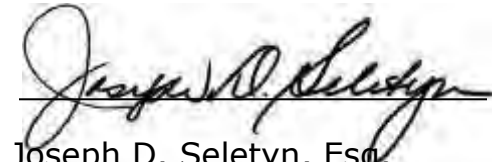
Furthermore, the trial court opinion fully discusses and properly disposes of the all of the issues presented in this appeal. **See** Trial Court Opinion, 2/8/2013, at 2–6 (finding: (1) Sections 7314 and 7315 of the Judicial Code do not apply to common law arbitrations; (2) the grounds upon which a party may seek to either vacate or modify a common law arbitration award are limited by Section 7341 to denial of a hearing, and fraud, misconduct, corruption or other irregularity, none of which were shown in this case; (3) attorney fees were properly awarded to Alla Korenman as Paragraph 7(f) of the arbitration agreement permits an award of attorney fees incurred as a result of the appeal of the arbitration award; (4) Burda had the opportunity to present evidence that would justify the vacation or modification of the arbitration award, but failed to present such evidence; (5) Burda's Emergency Petition for Stay of Arbitration Award, dated September 4, 2012, was previously denied by order dated November 29, 2012, and was not at issue during the hearing on December 6, 2012; and (6) The corrective order entered on December 13, 2012, following Burda's appeal, merely corrected an error, *i.e.*, failing to note in the body of the

Order entered on December 6, 2012 that the court had also considered Burda's petition to vacate the final arbitration award, and such correction is permissible pursuant to Pa.R.A.P. 1701(b)(1)).

Accordingly, we affirm the court's orders of December 6, 2012, and December 13, 2012, dismissing Burda's petition to vacate final arbitration award and petition to modify or correct final arbitration award on the basis of the trial court's opinion.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/15/2014