STATE OF MICHIGAN

COURT OF APPEALS

CAROLYN E. GUIDOT,

Plaintiff-Appellee,

v

DAVID WILLIAM DOLAN,

Defendant-Appellant.

UNPUBLISHED
July 10, 2007

No. 268640
Oakland Circuit Court
LC No. 01-656661-DM

Before: Bandstra, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right a judgment of divorce. We affirm.

Defendant first argues that the trial court erred when it failed to rule on his motion for reconsideration. We disagree. We review a trial court's decision on a motion for postjudgment relief for an abuse of discretion. *Hadfield v Oakland County Drain Comm'r*, 218 Mich App 351, 354; 554 NW2d 43 (1996).

MCR 2.119(F)(1) provides:

> Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., MCR 2.604[A], 2.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion.

When interpreting and applying a court rule, this Court applies the same principles that govern statutory interpretation. *Boulton v Fenton Twp*, 272 Mich App 456, 462; 726 NW2d 733 (2006). "Thus, if the language of the court rule at issue is clear and unambiguous, [this Court] must conclude that the plain meaning of the rule was intended and enforce the rule as written." *Tinman v Blue Cross and Blue Shield of Michigan (On Remand)*, 264 Mich App 546, 557; 692 NW2d 58 (2004).

Defendant moved the court to reconsider its denial of his motion to vacate the arbitration award on June 4, 2003. However, while the trial court had verbally denied defendant's motion to vacate the arbitration award and entered the judgment of divorce, which incorporated the award that defendant's motion sought to vacate, it had not yet entered an order to that effect. The plain

language of MCR 2.119(F)(1) requires that a party move for reconsideration of a decision on a motion *after* entry of an order disposing of that motion. Even though the court, in essence, ruled against defendant's motion to vacate the arbitration award when it entered the judgment of divorce incorporating that award, a court speaks through its written orders. MCR 2.602(A); *Rinas v Mercer*, 259 Mich App 63, 71; 672 NW2d 542 (2003). Because the court had not entered an order denying defendant's motion to vacate the arbitration award when defendant moved for reconsideration of the court's verbal denial, the court did not abuse its discretion by failing to rule on that motion

Defendant next argues that the arbitration award should be vacated because the arbitrator exceeded his authority and/or refused to hear evidence that was material to an issue of controversy. Defendant argues that the arbitrator exceeded his authority when he failed to: (1) consider defendant's premarital contribution to the marital home and the interim mortgage payments that he made during the pendency of this divorce; (2) consider his premarital contribution to a vacant lot that was purchased by the parties; (3) correctly state the value of the marital Salomon Smith Barney account; (4) include a $200,000 award to plaintiff in the arbitrator's table; (5) include in the arbitrator's table a $4,257.80 city tax refund that was awarded to plaintiff; (6) include in the arbitrator's table other miscellaneous awards/allocations; and (7) reduce the value of defendant's marital retirement accounts by the same 25 percent tax reduction he used for plaintiff. We disagree.

We review de novo a trial court's decision on a motion to enforce, vacate, or modify an arbitration award. *Bayati v Bayati*, 264 Mich App 595, 597-598; 691 NW2d 812 (2004). An arbitration award may "be vacated in limited circumstances, such as where an arbitrator evidences partiality, refuses to hear material evidence, or exceeds powers." *Collins v Blue Cross and Blue Shield of Michigan*, 228 Mich App 560, 567; 579 NW2d 435 (1998). See also, MCR 3.602(J)(1). Arbitrators exceed their authority when they act in contravention of controlling principles of law. *Krist v Krist*, 246 Mich App 59, 62; 631 NW2d 53 (2001). "A reviewing court may vacate an arbitration award where it finds an error of law that is apparent on its face and so substantial that, but for the error, the award would have been substantially different." *Collins, supra*.

Defendant argues that, before awarding plaintiff the marital home, the arbitrator failed to consider his premarital contribution to the marital home and the mortgage payments that he made during the course of this divorce. We disagree.

"The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances." *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). When dividing property in a divorce action, a court's first consideration is the determination of marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). "Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party. However, a spouse's separate estate can be opened for redistribution when one of two statutorily created exceptions is met." *Id.* at 494. The first exception permits invasion when "the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party." *Id.*, quoting MCL 552.23. The second exception permits invasion when "one significantly assists in the acquisition or growth of a spouse's separate asset." *Id.* at 494-495, citing MCL 552.401.

Here, defendant argues that the arbitrator acted in contravention of controlling principles of law when he failed to consider his $500,000 premarital contribution to the marital home and the mortgage payments that he made during the pendency of this divorce from January 2002 until December 2002. However, defendant is mistaken. The arbitrator concluded that the existing equity in the martial home was a marital asset. Despite finding that both parties contributed to the marital home with premarital assets, the arbitrator concluded that, because of the state of title, the double refinancing, the cost of supporting the house during defendant's incarceration, the payment of taxes for the property from joint funds, and the maintenance of the property as home for the parties and their children, none of the equity in the home would be considered as separate property.

The arbitrator considered the premarital contributions that both parties made to the marital home and the contributions that the parties made to the marital home during the marriage. Even if the arbitrator improperly calculated defendant's premarital contribution to the marital home and his interim mortgage payments, the arbitrator concluded that plaintiff contributed to the martial home with pre-marital assets and that she contributed to the growth of the marital home, which is a permitted exception to the general rule. *Reeves, supra* at 494-495.

Defendant also argues that the arbitrator failed to consider his premarital contribution to a vacant lot that the parties purchased, located at 5345 Elmgate Bay, in Orchard Lake, Michigan. Although defendant argues that the arbitrator admitted that defendant contributed $582,517.44 of premarital funds to the purchase of this property, defendant is mistaken. The arbitrator concluded that defendant failed to submit sufficient proof that his premarital assets purchased the Elmgate lot, and awarded a sale of the lot and an equal division of the proceeds between the parties.

The arbitrator did not violate principles of controlling law when he awarded the parties an equal division of the Elmgate lot. The arbitrator concluded that there was no evidence that defendant's premarital assets purchased the Elmgate lot, and therefore, there was no premarital contributions to consider. For the reasons stated, we are unable to find any errors of law that are apparent on the face of the arbitration award regarding this issue. *Collins*, *supra* at 567.

Defendant next argues that the arbitrator overvalued his marital Salomon Smith Barney account. According to defendant, the arbitrator failed to subtract $7,414. 93 from the account's total, which was mistakenly withdrawn from his non-marital Salomon Smith Barney account instead of the marital account bearing the same name to pay for marital debts. Because the arbitrator valued his marital account at $706,902, rather than its true value of $699,487.07, which takes into account the $7,414.93 that was mistakenly withdrawn from his non-marital account, defendant claims that the arbitrator's table should be corrected to reflect the true value of the marital Salomon Smith Barney Account. We disagree. Even if the arbitrator's table overvalues the marital Salomon Smith Barney account by $7,414.93, this error does substantially change the arbitration award. Defendant admitted that the error has been corrected. Given the size of the estate, we find that, even if there was error, it would not have substantially altered the award. *Collins*, *supra* at 567.

Defendant further argues that the arbitrator's failure to include in his table a $200,000 award to plaintiff from defendant's Smith Barney account, a $4,257.80 city tax refund awarded to plaintiff, and $39,368.90 in other miscellaneous awards/allocations constituted clear legal

error. Although the arbitrator failed to include the awards at issue in the table, defendant has failed to show that the omissions constituted clear legal error. Defendant offers no legal support for his claims. It is insufficient for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). The awards at issue were included in the arbitrator's supplementary findings of fact and in the amended arbitration award. The awards at issue were also included in the judgment of divorce. Although the arbitrator's table may have omitted the awards at issue, the actual arbitration award, which was more reflective of the arbitrator's findings and intentions, included the awards. For the reasons stated, defendant has failed to show clear legal error.

Defendant also argues that the arbitrator's failure to reduce the value of his non-marital retirement accounts by the same 25 percent tax reduction he used for plaintiff's marital retirement accounts constituted clear legal error and exceeded the arbitrator's powers. Although defendant argues that the arbitrator erred in this regard, he provides no support showing legal error. *Wilson, supra* at 243. The arbitrator reduced the retirement accounts included in the *marital* estate by 25 percent for both parties, based on the arbitrator's estimation of the amount of taxes that would have to be paid on these accounts. The arbitrator did not reduce defendant's *non-marital* retirement accounts by the 25 percent reduction because the arbitrator considered defendant's non-marital retirement accounts as separate property. The arbitrator provided for an estimation of taxes for the retirement accounts that were included in the marital estate. Because the retirement accounts at issue were not included in the marital estate, but were non-marital retirement accounts, we cannot conclude that the arbitrator erred.

Lastly, defendant argues that the arbitration award should be vacated because the arbitrator refused to hear evidence that was material to an issue of controversy. MCR 3.602(J)(1)(d) provides that a trial court must vacate an arbitration award if the arbitrator "refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights." Although defendant argues that the arbitrator refused to allow him to present evidence regarding the true value of the marital home and refused to allow defendant's expert to complete his testimony regarding premarital assets, defendant offers no factual evidence to back these claims. Defendant does not provide this Court with a transcript of the arbitration proceeding or any other evidence for this Court to determine the merits of his claims. Because defendant offers no evidence to support his claims, we cannot conclude that the arbitrator erred. *Wilson, supra* at 243.

We affirm.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood