[Cite as *Worndle v. Colonnade Med. Group, Inc.*, 2018-Ohio-462.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JOHAN WORNDLE, M.D.	:	JUDGES:
	:	
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellant/Cross-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	Case No. 17-CA-24
	:	
COLONNADE MEDICAL GROUP, INC.	:	
	:	
	:	
	:	
Defendant-Appellee/Cross-Appellant	:	O P I N I O N
	:	

CHARACTER OF PROCEEDING:	Appeal from the Fairfield County Court of Common Pleas, Case No. 16CV00439
JUDGMENT:	AFFIRMED IN PART; REVERSED IN PART; JUDGMENT ENTERED
DATE OF JUDGMENT ENTRY:	January 31, 2018

APPEARANCES:

For Plaintiff-Appellant/Cross-Appellee:	For Defendant-Appellee/Cross-Appellant:
RICHARD B. REILING 6135 Memorial Dr., Suite 102 A Dublin, OH 43017	D. JOE GRIFFITH BRIAN W. KELSO 144 E. Main St. P.O. Box 667 Lancaster, OH 43130

Delaney, P.J.

{¶1} Plaintiff-Appellant/Cross-Appellee John Worndle, M.D. and Defendant-Appellee/Cross-Appellant Colonnade Medical Group, Inc. appeal the November 3, 2016 and May 1, 2017 judgment entries of the Fairfield County Court of Common Pleas.

FACTS AND PROCEDURAL HISTORY

{¶2} Defendant-Appellee/Cross-Appellant Colonnade Medical Group, Inc. is an Ohio corporation with its principal place of business located in Lancaster, Ohio. Plaintiff-Appellant/Cross-Appellee Johan Worndle, M.D. entered into an employment agreement with Colonnade on July 21, 2011. Dr. Worndle was employed to provide medical services to Colonnade as a full-time hospitalist. In May 2014, Colonnade terminated Dr. Worndle's employment.

Arbitration Proceedings

{¶3} Pursuant to section 13.01 of the employment agreement, Dr. Worndle filed a Complaint with the American Arbitration Association against Colonnade. Dr. Worndle alleged several causes of action including: (1) breach of contract; (2) unjust enrichment; (3) violation of R.C. 4113.15; and (3) fraudulent inducement.

{¶4} The parties filed cross-motions for summary judgment. The arbitrator determined a dispute of material facts existed as to Dr. Worndle's claims for breach of contract, R.C. 4113.15, and fraud claims. The arbitrator granted Colonnade judgment as to Dr. Worndle's claim for unjust enrichment.

{¶5} The arbitration hearing was held on March 21, 2016. The claims before the arbitrator were Dr. Worndle's claims for breach of contract, violation of R.C. 4113.15, and fraud. Dr. Worndle first argued Colonnade breached the terms of the employment

agreement and was in violation of R.C. 4113.15 when it failed to compensate him for working additional shifts. He next argued he was entitled to compensation for 30 days of unused vacation days in the amount of $54,000.00. Dr. Worndle finally argued Colonnade fraudulently induced Dr. Worndle to enter into the employment agreement by verbally promising Dr. Worndle a partnership opportunity with Colonnade, to which Dr. Worndle relied upon to his detriment.

{¶6} The arbitrator issued his Final Award, Findings of Fact, and Conclusions of Law on May 3, 2016. The arbitrator determined the following pertinent facts:

{¶7} Colonnade and Dr. Worndle negotiated the terms of the employment agreement. The employment agreement was to run from August 29, 2011 to August 29, 2016, unless terminated earlier by either party. The final agreement provided Dr. Worndle would be compensated a guaranteed minimum salary of $215,000 per year with a Productivity Bonus based upon receipts collected. Colonnade was responsible for setting Dr. Worndle's actual work days, hours, and call times of employment which would not be unreasonable and would be mutually agreed upon. Dr. Worndle and Colonnade initially contemplated that Dr. Worndle would work a schedule of seven consecutive days on followed by seven consecutive days off.

{¶8} The employment agreement provided for vacation. The agreement stated:

> Not more than Ten (10) weekdays PTO [paid time off] per contract year. PTO days may start after four months of employment. No more than two unused days may be carried forward into a succeeding year. PTO dates will be requested in writing and are subject to prior approval of corporation. All efforts will be made by physician and corporation to avoid more than two

physicians on PTO at any one time. Written policies of the corporation may be utilized to expand and/or clarify any questions or conflicts that may arise regarding professional's PTO.

{¶9} During Dr. Worndle's employment, Dr. Worndle and Colonnade adjusted Dr. Worndle's work schedule so that he was working five consecutive days with nine consecutive days off. Dr. Worndle worked this schedule until 2012, when he returned to a seven day on seven day off schedule. During his employment, Colonnade sent Dr. Worndle a draft copy of his shift schedule and Dr. Worndle informed Colonnade of any vacations or scheduling issues.

{¶10} In 2013, Colonnade agreed to pay Dr. Worndle an additional $1,000.00 for two additional shifts, which amounted to an additional $4,000.00 per month.

{¶11} In 2014, Dr. Worndle took vacation from April 27, 2014 to May 3, 2014. He was compensated for those vacation days.

{¶12} On March 3, 2014, Colonnade informed Dr. Worndle of his termination. It was based on this termination that Dr. Worndle requested arbitration.

{¶13} In the May 3, 2016 final arbitration award, the arbitrator first found Colonnade was not in breach of its employment agreement with Dr. Worndle or in violation of R.C. 4113.15 From August 2011 to the beginning of 2013, Colonnade paid Dr. Worndle the same sum regardless of the amount of hours he actually worked. Even if Dr. Worndle did not work during a particular week, he still received his salary. From September 2013 through March 3, 2014, Colonnade paid Dr. Worndle an additional $1,000.00 for additional shifts he actually worked, up to four per month. The arbitrator determined there was no agreement between the parties related to additional compensation for night calls.

{¶14} The arbitrator next addressed Dr. Worndle's claim for compensation for unused PTO. The decision stated that per the terms of the employment agreement, Dr. Worndle was not entitled to more than 12 PTO days off in a given year. The arbitrator found Dr. Worndle took a vacation from April 27, 2014 to May 3, 2014. The arbitrator concluded that Dr. Worndle was entitled to an additional five days of vacation, or compensation for the same. The arbitrator ordered Colonnade to pay Dr. Worndle the five days of PTO it previously agreed to pay.

{¶15} The arbitrator finally determined that Dr. Worndle failed to prove his claim of fraudulent inducement as to the issue of a partnership with Colonnade.

{¶16} After the final arbitrator award, Colonnade issued Dr. Worndle a check for $1,666.99 to compensate Dr. Worndle for his five days of unused PTO.

Trial Court Proceedings

{¶17} On July 29, 2016, Dr. Worndle filed a complaint with the Fairfield County Court of Common Pleas, asking the trial court to vacate the arbitration award pursuant to R.C. 2711.13. In response, Colonnade filed a motion to dismiss, arguing that Dr. Worndle failed to state a claim as a matter of law.

{¶18} The trial court reviewed the motion to dismiss and on November 3, 2016, the trial court granted the motion in part and denied the motion in part. Pursuant to its limited review regulated by statute, the trial court found the arbitration award as to Dr. Worndle's claims for unjust enrichment, breach of contract, and fraudulent inducement must stand and granted Colonnade's motion to dismiss as to those claims. In his civil complaint, Dr. Worndle also argued the arbitrator miscalculated his unused PTO time. The trial court denied Colonnade's motion to dismiss on this claim. The trial court stated:

> Simply stated, the pleadings leave too many questions unanswered to grant Colonnade judgment as matter of law on this issue. For instance, did Plaintiff submit a written request prior to using his PTO as alleged in April 2014? Do Colonnade's payroll records reflect any "Vacation Pay" or "PTO Used" for that time period? Is there documentation of either? If not, how did Colonnade track employee's PTO balances?

(Judgment Entry, Nov. 3, 2016).

{¶19} The trial court set the matter for a bench trial, held on March 3, 2017. The trial court stated the only two issues remained for the court's determination: (1) should the Award be modified because Dr. Worndle proved that he did not utilize seven additional PTO days in 2014, and (2) should the Award be modified as to the amount of compensation Dr. Worndle proved he was entitled to receive for unused PTO in 2014. All parties appeared and presented testimony and exhibits on the issue, which were admitted into evidence. The trial court issued its final judgment entry on May 1, 2017.

{¶20} The trial court utilized R.C. 2711.11 in making its decision. It considered the evidence presented to find there was an evident material miscalculation of figures in the arbitration decision as to the number of unused PTO days and the amount of the award for compensation for the unused PTO days. The arbitrator found Dr. Worndle was entitled to be compensated for five unused PTO days in 2014. The trial court determined the arbitrator erred and the evidence demonstrated Dr. Worndle was entitled to be compensated for 12 unused PTO days in 2014. The trial court utilized the arbitrator's factual determination that an additional shift was valued at $1,000.00 to calculate the

value of a PTO day was $1,000.00. Accordingly, the trial court assigned the total value of $12,000.00 for Dr. Worndle's unused PTO days in 2014.

{¶21} The court therefore modified the arbitration award to find that Colonnade should pay Dr. Worndle for 12 days of unused PTO for the year of 2014, at the rate of $1,000.00 per day, for a total payment of $12,000.00 less applicable payroll deductions.

{¶22} Dr. Worndle and Colonnade now appeal.

DR. WORNDLE'S ASSIGNMENTS OF ERROR

{¶23} Dr. Worndle raises three Assignments of Error:

{¶24} "I. THE TRIAL COURT ERRED BY FAILING TO VACATE OR MODIFY THE ARBITRATOR'S AWARD CONCERNING WORNDLE'S PAYMENT FOR ADDITIONAL SHIFTS.

{¶25} "II. THE TRIAL COURT ERRED BY DETERMINING THAT WORNDLE WAS ONLY ENTITLED TO PAYMENT FOR 12 PTO DAYS.

{¶26} "III. THE TRIAL COURT ERRED BY FAILING TO AWARD WORNDLE LIQUIDATED DAMAGES UNDER R.C. 4113.15."

COLONNADE'S CROSS-ASSIGNMENTS OF ERROR

{¶27} Colonnade raises two Cross-Assignments of Error:

{¶28} "I. THE TRIAL COURT ERRED IN FAILING TO AFFIRM THE ARBITRATOR'S FINAL AWARD IN ITS ENTIRETY.

{¶29} "II. THE TRIAL COURT ERRED BY OVERRULING THE ARBITRATOR'S CONCLUSIONS OF LAW REGARDING THE AMOUNT AND VALUE OF PTO OWED TO THE APPELLANT."

ANALYSIS

{¶30} Dr. Worndle argues in his first and third Assignments of Error that the trial court erred in granting Colonnade's motion to dismiss as to his claims for unjust enrichment, breach of contract, and fraudulent inducement. His second Assignment of Error addresses the trial court's judgment as to the unused PTO days. Colonnade's Cross-Assignments of Errors argue the trial court erred in modifying the arbitration award.

Public Policy Favors Arbitration

{¶31} "Both the Ohio General Assembly and Ohio courts have expressed a strong public policy favoring arbitration." *Craver v. Tomsic*, 5th Dist. Delaware No. 13CAE110078, 2014-Ohio-2603, ¶ 17 quoting *Hayes v. Oakridge Home,* 122 Ohio St.3d 63, 2009–Ohio–2054, 908 N.E.2d 408, ¶ 15, citing R.C. Chapter 2711, *Taylor Bldg. Corp. of Am. v. Benfield,* 117 Ohio St.3d 352, 884 N.E.2d 12, 2008–Ohio–938, ¶ 27, and *Williams v. Aetna Fin. Co.,* 83 Ohio St.3d 464, 471, 700 N.E.2d 859 (1998). "'Arbitration is favored because it provides the parties thereto with a relatively expeditious and economical means of resolving a dispute'." *Kelm v. Kelm,* 68 Ohio St.3d 26, 29, 623 N.E.2d 39 (1993), quoting *Schaefer v. Allstate Ins. Co.,* 63 Ohio St.3d 708, 712, 590 N.E.2d 1242 (1992). "Arbitration also has the additional benefit of unburdening crowded court dockets." *Hayes* at ¶ 15, citing *Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities v. Mahoning Cty. TMR Edn. Assn.,* 22 Ohio St.3d 80, 83, 488 N.E.2d 872 (1986).

Trial Court Review of Arbitration Award is Limited

{¶32} "Arbitration awards are presumed valid, and a reviewing court may not merely substitute its judgment for that of the arbitrator." *Dodge v. Dodge*, 2017-Ohio-

7087, -- N.E.3d --, ¶ 13 (10th Dist.) citing *State v. Ohio Civ. Serv. Emps. Assn., Local 11 AFSCME AFL-CIO*, 2016-Ohio-5899, 71 N.E.3d 622, ¶ 12 citing *Schaefer v. Allstate Ins. Co*., 63 Ohio St.3d 708, 711, 590 N.E.2d 1242 (1992). The Ohio Supreme Court observed that "[t]he whole purpose of arbitration would be undermined if courts had broad authority to vacate an arbitration award." *Mahoning Cty*., at 83-84, 488 N.E.2d 872.

{¶33} "The jurisdiction of the courts to review arbitration awards is thus statutorily restricted; it is narrow and it is limited." *Massillon City School Dist. Bd. of Edn. v. Massillon Edn. Assn.*, 2014-Ohio-3197, 17 N.E.3d 56, ¶ 22 (5th Dist.) quoting *Smith v. Palm Harbor Homes, Inc.,* 5th Dist. Guernsey No. 05 CA 31, 2006-Ohio-5863, ¶ 14, quoting *Miller v. Gunckle,* 96 Ohio St.3d 359, 2002-Ohio-4932, 775 N.E.2d 475, ¶ 10 (additional citations and internal quotations omitted). The court of common pleas can only base its decision on the arbitration record. *Arrow Uniform Rental, L.P. v. K&D Group, Inc*., 11th Dist. Lake No. 2010-L-152, 2011-Ohio-6203, ¶ 32, 35. It is generally recognized that the interpretation of the agreement and the determination of the factual matters are clearly within the powers of the arbitrator. *See Lancaster Educ. Ass'n. v. Lancaster City School Dist. Bd. of Educ.*, 5th Dist. Fairfield No. 97 CA 82, 1998 WL 346841 (May 29, 1998), citing *Hillsboro v. Fraternal Order of Police, Ohio Labor Council, Inc.*, 52 Ohio St.3d 174, 556 N.E.2d 1186 (1990). "The arbitrator is the final judge of both the law and the facts, and a court may not substitute its judgment for that of the arbitrator. * * * Judicial deference in arbitration cases is based on a recognition that the parties have agreed to have their dispute settled by an arbitrator rather than the courts and 'to accept the arbitrator's view of the facts and the meaning of the contract regardless of the outcome of the arbitration.'" *Arrow Uniform Rental, L.P., supra* at ¶ 35-36.

{¶34} Once arbitration is completed, a trial court has no jurisdiction over the arbitration award other than that granted by statute. “A trial court may not evaluate the actual merits of an award and must limit its review to determining whether the appealing party has established that the award is defective within the confines of Chapter R.C. 2711.” *Dodge v. Dodge*, 2017-Ohio-7087, -- N.E.3d --, ¶ 14 (10th Dist.) quoting *Telle v. Estate of William Soroka*, 10th Dist. Franklin No. 08AP-272, 2008-Ohio-4902, ¶ 9.

{¶35} R.C. 2711.10 provides that a court may vacate an award “upon the application of any party,” for any of the following reasons: (1) the award was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption on the part of the arbitrators; (3) the arbitrators are guilty of misconduct in refusing to postpone the hearing, or refusing to hear pertinent and material evidence; or (4) the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. *Dodge, supra* at ¶ 17. R.C. 2711.10 thus “limits judicial review of arbitration to claims of fraud, corruption, misconduct, an imperfect award, or that the arbitrator exceeded his authority.” *Goodyear Tire & Rubber Co. v. Local Union No. 220*, 42 Ohio St.2d 516, 330 N.E.2d 703 (1975), paragraph two of the syllabus.

{¶36} R.C. 2711.11 states that, “upon the application of any party,” a court may modify or correct an arbitration award for any of the following reasons: (1) there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property; (2) the arbitrators have awarded upon a matter not submitted to them; or (3) the award is imperfect in matter of form not affecting the merits of the controversy. *Dodge, supra* at ¶ 16 citing *Robert W. Setterlin & Sons v. N. Mkt. Dev.*

Auth., 10th Dist. No. 99AP–141, 1999 WL 1267340 (Dec. 30, 1999) (noting that the types "of errors in an arbitration award that warrant correction by a trial court are those that appear on the face of the award").

Appellate Review of Trial Court Judgment

{¶37} A party may appeal the trial court's judgment to confirm, modify, vacate, or correct an arbitration award. There is a disagreement between the Ohio appellate courts as to the appropriate standard of review and the issue is currently before the Ohio Supreme Court at the time this opinion was authored. *See Portage Cty. Bd. of Dev. Disabilities v. Portage Cty. Educators' Assn. for Dev. Disabilities*, 150 Ohio St.3d 1406, 2017-Ohio-6964, 78 N.E.3d 907. The Court certified a conflict as to what standard of review governs appellate review of a decision by the court of common pleas confirming, modifying, vacating, or correcting an arbitration award. *Id*.

{¶38} In some districts, it is held that an appellate court will review the common pleas court's decision to confirm, modify, vacate, or enforce the arbitration award under an abuse of discretion standard of review. *See In re Hamilton v. Intl. Union of Operating Engineers, Local 20*, 2016-Ohio-5565, 69 N.E.3d 1253, ¶ 12 (12th Dist.); *Cleveland State Univ. v. Fraternal Order of Police, Ohio Labor Council, Inc.*, 2015-Ohio-4772, 50 N.E.3d 285, ¶ 12 (8th Dist.); *Dodge v. Dodge*, 2017-Ohio-7087, -- N.E.3d --, ¶ 19 (10th Dist.). An abuse of discretion is more than an error of law or judgment, and requires a finding that the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶39} Other appellate districts, including the Fifth District, hold the standard of review of a trial court's decision as to an arbitration decision is de novo. *Portage Cty. Bd.*

of Dev. Disabilities v. Portage Cty. Educators' Assn. for Dev. Disabilities, 2017-Ohio-888, -- N.E.3d --, ¶13 (11th Dist.); *See also Massillon City School Dist. Bd. of Edn. v. Massillon Edn. Assn*., 2014-Ohio-3197, 17 N.E.3d 56, ¶ 23, (5th Dist.); *Kettering Health Network v. CareSource*, 2d Dist. Montgomery No. 27233, 2017-Ohio-1193, 2017 WL 1193798, ¶ 10; *Northwest State Community College v. Northwest State Community College Edn. Assn. OEA/NEA*, 2016-Ohio-8393, 79 N.E.3d 1127, ¶ 33 (3d. Dist.); *Lauro v. Twinsburg*, 9th Dist. Summit No. 23711, 2007-Ohio-6613, 2007 WL 4322559, ¶ 7; *Bowden v. Weickert*, 6th Dist. Sandusky No. S-05-009, 2006-Ohio-471, 2006 WL 259642, ¶ 51; *Adams Cty./Ohio Valley Local School v. OAPSE/AFSCME, Local 572*, 4th Dist. Adams No. 16CA1034, 2017-Ohio-6929, ¶ 18. The Fourth District emphasized that its review was not a de novo review of the merits of the dispute as presented to the arbitrator. *Adams Cty./Ohio Valley Local School, supra* at ¶ 18. The court stated it reviewed the trial court's order vacating an arbitration award de novo to see whether any of the statutory grounds for vacating an award existed. *Id*.

Modification of Arbitration Decision as to the Unused PTO Days

{¶40} The issue of whether to use an abuse of discretion standard of review or de no standard of review does not impede our analysis of the trial court's order modifying the arbitration award as to the unused PTO days. Utilizing either standard of review, we find the trial court went beyond its permitted statutory review when it modified the arbitrator's award to find Dr. Worndle was entitled to additional unused PTO days.

{¶41} The trial court found Dr. Worndle demonstrated there was a statutory ground under R.C. 2711.11(A) to modify the arbitration award as to the amount of unused PTO days. R.C. 2711.11(A) states a trial court may modify or correct an award if there

existed "an evident miscalculation of figures or an evidence material mistake in the description of any person, thing, or property referred to in the award * * *."

{¶42} The application of R.C. 2711.11(A) to the review of an arbitration award is complicated in that it appears on its face to allow additional fact-finding by the trial court. It is well-settled that a trial court must accept the arbitrator's view of the facts and may not reject those facts simply because the trial court disagrees with them. How then does a trial court apply R.C. 2711.11(A)?

{¶43} The Eleventh District Court of Appeals interpreted R.C. 2711.11(A) to mean that "an arbitration award can only be modified if the miscalculation is evident from the face of the award and can be corrected without fact-finding." *Arrow Uniform Rental, L.P. v. K&D Group, Inc*., 11th Dist. Lake No. 2010-L-152, 2011-Ohio-6203, ¶ 51, citing *Mike McGarry & Sons, Inc. v. Marous Bros. Constr., Inc*., 11th Dist. No. 2009-L-056, 2010-Ohio-823, ¶ 60-62. The court refused to apply R.C. 2711.11(A) because the arbitrator's award did not disclose any mathematical error on its face, but the award was simply based on different criteria than the appellant would prefer. *Utility Workers Union of America Local 436-A v. Eastern Ohio Regional Wastewater Auth.*, 7th Dist. Belmont No. 16 BE 0060, 2017-Ohio-7794, ¶ 32 citing *Arrow Uniform Rental, supra*.

{¶44} Our brethren from the Tenth District, Second District, and Seventh District have also held that a material miscalculation warranting modification of an arbitration award must be of such a nature that it can be corrected without the use of any fact-finding, discretion, or judgment. *See Utility Workers Union of America Local 436-A v. Eastern Ohio Regional Wastewater Auth.*, 7th Dist. Belmont No. 16 BE 0060, 2017-Ohio-7794; *Robert W. Setterlin & Sons v. N. Market Dev. Auth. Inc.,* 10th Dist. Franklin No. 99AP-

141, 1999 WL 1267340 (Dec. 30, 1999); *Rathweg Ins. Assoc., Inc. v. First Ins. Agency Corp.*, 2nd Dist. No. 13184, 1992 WL 206764 (Aug. 18, 1992). In *Utility Workers Union of America*, the initial award issued by the arbitrator provided a start date for back pay on October 30, 2014. 2017-Ohio-7794, ¶ 30. A supplemental award added an end date of December 31, 2014. It also changed the year in the start date to 2015 so the back pay award read: "October 30, 2015 to December 31, 2014 * * *." *Id*. The trial court found under R.C. 2711.11(A) there was a scrivener's error and changed the year in the start date from 2015 to 2014. The appellant argued the correction could not be maintained because it was unsupported by the record. *Id*. at ¶ 31. The court disagreed and found the mistake was evident on the face of the award. First, the date range was chronologically impossible. Second, it was evident from the arbitrator's initial award and supplemental award there was a mistake in dates. *Id*.

{¶45} " 'Ohio law recognizes that when parties agree to submit their disputes to binding arbitration, they have bargained for the arbitrator's determination concerning the issues submitted and agreed to accept the result regardless of its legal or factual accuracy.' " *Dodge v. Dodge*, 10th Dist. Franklin No. 16AP-166, 2017-Ohio-7087, ¶ 28 quoting *Robert W. Setterlin & Sons*, quoting *Marra Constructors, Inc. v. Cleveland Metroparks Sys.*, 82 Ohio App.3d 557, 562, 612 N.E.2d 806 (8th Dist. 1993). Although " '[t]hat result may seem inequitable, * * * any different result would destroy the integrity of binding arbitration. * * * If the parties could challenge an arbitration decision on the ground that the arbitrators erroneously decided legal or factual issues, no arbitration would be binding.' " *State ex rel. Internatl. Union of Operating Engs., Local No. 18 v. Simmons*, 58

Ohio St.3d 247, 248, 569 N.E.2d 886 (1991), quoting *Huffman v. Valletto*, 15 Ohio App.3d 61, 63, 472 N.E.2d 740 (8th Dist. 1984).

{¶46} In the present case, the arbitrator found the employment agreement provided Dr. Worndle with a total of 12 days of PTO in a year. Dr. Worndle took a vacation from April 27, 2014 to May 3, 2014. The arbitrator found that Dr. Worndle was entitled to additional five days of vacation, or compensation for the same. A review of the arbitration award finding Dr. Worndle was entitled to five days of unused PTO days does not disclose any mathematical error on its face. The arbitration award was simply based on different criteria than Dr. Worndle would have preferred. When the trial court found Dr. Worndle was entitled to additional unused PTO days based on the evidence presented at the bench trial, the trial court engaged in fact-finding beyond the trial court's limited review as stated in R.C. 2711.11(A). The trial court's modification of the arbitration award as to the amount of unused PTO days was not permissible under R.C. 2711.11(A).

{¶47} The other issue before the trial court was the compensation for the unused PTO days. The arbitrator ordered Colonnade to pay Dr. Worndle the five days of unused PTO it previously agreed to pay. The arbitration award did not set a specific amount Colonnade was to pay Dr. Worndle for the five days of unused PTO days. Colonnade issued Dr. Worndle a check for $1,666.99 to compensate Dr. Worndle for his five days of unpaid PTO.

{¶48} The trial court found pursuant to R.C. 2711.11(A), the arbitrator miscalculated the value of the compensation by deferring to Colonnade's discretion to calculate the value of the PTO days. On this matter, we agree with the trial court that Dr. Worndle established there were statutory grounds to find there was an evident mistake in

the calculation of the award. The arbitration award is silent as to the amount that Colonnade previously agreed to pay Dr. Worndle as to unused PTO days. We find the trial court's utilization of $1,000.00 per shift as previously agreed by the parties to be the appropriate valuation of an unused PTO day based on the arbitrator's findings of fact. Pursuant to App.R. 12(B), we enter judgment as a matter of law that Dr. Worndle is entitled to compensation in the amount of $5,000.00 for five days of unused PTO days.

{¶49} Based on our analysis, we sustain in part and overrule in part Colonnade's Cross-Assignments of Error. We overrule Dr. Worndle's second Assignment of Error.

Motion to Dismiss

{¶50} Dr. Worndle argues in his first and third Assignments of Error that the trial court erred in granting Colonnade's motion to dismiss as to his claims for unjust enrichment, breach of contract, and fraudulent inducement.

{¶51} Our standard of review on a Civil Rule 12(B) motion to dismiss is de novo. *Huntsman v. State*, 5th Dist. Stark No. 2016CA00206, 2017-Ohio-2622, 2017 WL 1710432, ¶ 20 citing *Greeley v. Miami Valley Maintenance Contractors Inc.*, 49 Ohio St.3d 228, 551 N.E.2d 981 (1990). Colonnade argued Dr. Worndle's motion to vacate or modify the arbitration award should be dismissed for failure to state a claim. A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey County Bd. of Commissioners*, 65 Ohio St.3d 545, 605 N.E.2d 378 (1992). Under a de novo analysis, we must accept all factual allegations of the complaint as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Byrd v. Faber*, 57 Ohio St.3d 56, 565 N.E.2d 584 (1991). In order to dismiss a complaint pursuant to Civil

Rule 12(B)(6), it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle plaintiff to relief. *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 573 N.E.2d 1063 (1991).

{¶52} Dr. Worndle alleged in his complaint that the arbitration award was defective pursuant to R.C. 2711.10(D), which states the arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. Dr. Worndle also alleged there was an evident miscalculation in the award pursuant to R.C. 2711.11(A). In granting Colonnade's motion to dismiss in part, the trial court reviewed the complaint, which included the employment agreement, the arbitrator's ruling on the summary judgment motions, and the final arbitration award. The trial court found the arbitrator issued a lengthy opinion setting forth specific findings of fact as well as detailed explanations for his findings. Accepting all the factual allegations of Dr. Worndle's complaint as true and relying upon its limited statutory review of an arbitration award, the trial court found the arbitrator's findings as to Dr. Worndle's claims for unjust enrichment, breach of contract, and fraudulent inducement were supported by the terms of the employment agreement.

{¶53} We have conducted a de novo review of the trial court's decision to grant Colonnade's motion to dismiss, mindful of the statutory constraints of reviewing an arbitration award, and agree with the trial court's conclusions as to Dr. Worndle's claims for unjust enrichment, breach of contract, and fraudulent inducement.

{¶54} Dr. Worndle's first and third Assignments of Error are overruled.

CONCLUSION

{¶55} Based on the foregoing, the judgments of the Fairfield County Court of Common Pleas are affirmed in part and reversed in part.

{¶56} Pursuant to App.R. 12(B), judgment is granted as a matter of law that Dr. Worndle is entitled to $5,000.00 for five days of unused PTO days.

By: Delaney, P.J.,

Hoffman, J. and

E. Wise, J., concur.