

[Cite as *White v. Fitch*, 2015-Ohio-4387.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102725

ERICA WHITE

PLAINTIFF-APPELLANT

vs.

**TIMOTHY FITCH, D.B.A.
FITCH HOME IMPROVEMENT**

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-836477

BEFORE: Jones, P.J., E.A. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: October 22, 2015

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LARRY A. JONES, SR., P.J.:

{¶1} Plaintiff-appellant, Erica White, appeals the trial court's denial of her motion to vacate or modify an arbitration award. We affirm.

{¶2} In 2013, White entered into a contract with defendant-appellee Timothy Fitch d.b.a. Fitch Home Improvement for certain improvements to her Solon home. The contract contained an arbitration clause and was for \$20,000.

{¶3} Fitch was to perform repairs and other work to various areas of White's home. Unsatisfied with the quality of the work, White filed a complaint and demand for arbitration with the American Arbitration Association claiming that Fitch caused damage to her house that exceeded \$45,000.

{¶4} An arbitration hearing was held in October 2014. The arbitrator issued an award in favor of White and determined that aspects of the renovation and remodeling construction were in breach of contract because they were not completed in a good and workmanlike manner. But the arbitrator concluded that while there was a breach of contract, the breach did not violate the Consumer Sales Practices Act ("CSPA") and denied treble damages. In all, the arbitrator awarded \$17,364 for siding replacement, \$9,340 for dining room and sunroom repairs, \$1,506 for repairs to the second floor of the house, and \$593 for driveway repair, but issued no award for roof replacement, glass block windows, or repairs to the basement, for a total award of \$28,803.

{¶5} White subsequently filed an action in Cuyahoga County Common Pleas Court, asking the court to modify or vacate the arbitration award. The trial court denied the

motion and confirmed the arbitration award, finding that the arbitrator's award was not unlawful, arbitrary, or capricious.

{¶6} White appealed, and raises the following assignments of error for our review:

I. The trial court erred in failing to hold a hearing on appellant's application to vacate the arbitration award.

II. The trial court erred in failing to vacate or modify the arbitration award, because the arbitrator exceeded his powers by fashioning an illogical and facially inconsistent award, bearing no rational connection to the facts and law of the case, for the clear purpose of imposing his own brand of justice.

III. The trial court erred in failing to vacate the arbitration award, because the arbitrator was guilty of misbehavior.

{¶7} A common pleas court's review of an arbitration decision is narrow. *Goodyear Rubber Co. v. Local Union No. 200*, 42 Ohio St.2d 516, 520, 330 N.E.2d 703 (1975).

The court may not review the merits of an arbitration award and can set aside an arbitration award only if the party attempting to set aside the award is able to establish that the award is defective in a manner recognized by R.C. Chapter 2711.10. *Midwest Curtainwalls, Inc. v. Pinnacle 701, L.L.C.*, 8th Dist. Cuyahoga No. 90591, 2008-Ohio-5134, ¶ 6, citing *Hillsboro v. Fraternal Order of Police*, 52 Ohio St.3d 174, 556 N.E.2d 1186 (1990).

{¶8} R.C. 2711.10 provides that the trial court may vacate an arbitrator's award if:

(1) the award was procured by corruption, fraud, or undue means, (2) there is evident partiality or corruption on the part of the arbitrators, (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other

misbehavior by which the rights of any party have been prejudiced, 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.

{¶9} An appellate court's review of the common pleas court's judgment is likewise limited:

Appellate review of arbitration proceedings is confined to an evaluation of the order issued by the court of common pleas, pursuant to R.C. Chapter 2711. The substantive merits of the original arbitration award are not reviewable on appeal absent evidence of material mistake or extensive impropriety.

Lynch v. Halcomb, 16 Ohio App.3d 223, 475 N.E.2d 181, paragraph two of the syllabus (12th Dist.1984). Thus, an appellate court may only reverse if it finds that the trial court acted in an unreasonable, arbitrary, or unconscionable manner in rendering its decision. *Marra Constructors, Inc. v. Cleveland Metroparks Sys.*, 82 Ohio App.3d 557, 563, 612 N.E.2d 806 (8th Dist.1993), citing *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.*, 49 Ohio St.3d 129, 551 N.E.2d 186 (1990).

{¶10} Importantly, the fact that a trial court might arrive at a different conclusion from the arbitrator is also immaterial. *Orwell Natural Gas Co. v. PCC Airfoils, L.L.C.*, 189 Ohio App.3d 90, 95, 2010-Ohio-3093, 937 N.E.2d 609, (8th Dist.), citing *Motor Wheel Corp. v. Goodyear Tire & Rubber Co.*, 98 Ohio App.3d 45, 647 N.E.2d 844 (8th Dist.1994). The trial court is bound by an arbitrator's factual findings and serves only as a mechanism to enforce the arbitrator's award. *Orwell Natural Gas* at *id.*, citing *Warren Edn. Assn. v. Warren Bd. of Edn.*, 18 Ohio St.3d 170, 480 N.E.2d 456 (1985).

{¶11} It is with the above standards in mind that we review White's arguments.

{¶12} In her first assignment of error, White argues that the trial court erred in failing to hold a hearing on her motion to modify or vacate the arbitration award. White claims that a hearing is required before a trial court may confirm an arbitration award or grant or deny a motion to modify or vacate an arbitration award. We disagree.

{¶13} This court was faced with a similar situation in *Strnad v. Orthohelix Surgical Designs*, 8th Dist. Cuyahoga No. 94396, 2010-Ohio-6161. In *Strnad*, the appellant argued that the trial court erred when it denied his motion to modify or vacate the arbitration award without holding a hearing and confirmed the arbitration award when there was no pending motion to confirm the award.

{¶14} This court noted that trial courts are not required to conduct hearings before confirming arbitration awards; thus, the trial court did not err when it sua sponte confirmed the arbitration award after it denied the motion to modify or vacate without holding a hearing:

These hearings are governed by Civ.R. 7(B), which is grounded on the premise that the parties should be given adequate notice and an opportunity to be heard. The law of this district is clear that where, as here, a party is provided ample opportunity to be heard through the pleadings process and pretrial conferences, a hearing is not required by R.C. 2711.09.

Id. at ¶ 38; *see also Cleveland Police Patrolman's Assn. v. Cleveland*, 8th Dist. Cuyahoga No. 65874, 1994 Ohio App. LEXIS 3347 (July 28, 1994).

{¶15} Again, here, the trial court denied White's motion to modify or vacate the arbitration award without a hearing and sua sponte confirmed the arbitration award. The

trial court was within its authority to do so; the court was not obligated to hold a hearing on White's motion to modify or vacate the arbitration award before it ruled on the motion and sua sponte confirmed the award. Moreover, we note that White never requested a hearing, and could have made such a request in her initial motion to modify or vacate the arbitration award or in her reply brief to Fitch's brief in opposition to her motion to modify or vacate the arbitration award.

{¶16} Therefore, the first assignment of error is overruled.

{¶17} In the second assignment of error, White argues that the trial court erred in denying her motion because the arbitrator exceeded his powers by fashioning "an illogical and facially inconsistent award that bore no rational connection to the facts and law of the case."

{¶18} In *Cedar Fair, L.P. v. Falfas*, 140 Ohio St.3d 447, 2014-Ohio-3943, 19 N.E.3d 893, the Ohio Supreme Court reiterated the scope of an arbitrator's authority and the court's role in reviewing it:

* * * [U]nder R.C. 2711.10(D) arbitrators can exceed their powers by going beyond the authority provided by the bargained-for agreement or by going beyond their contractual authority to craft a remedy under the law. * * * Arbitrators act within their authority to craft an award so long as the award "draws its essence" from the contract—that is, "when there is a rational nexus between the agreement and the award, and where the award is not arbitrary, capricious or unlawful." * * * So long as there is a good-faith argument that an arbitrator's award is authorized by the contract that provides the arbitrator's authority, the award is within the arbitrator's power, but an award "departs from the essence of a [contract] when: (1) the award conflicts with the express terms of the agreement, and/or (2) the award is without rational support or cannot be rationally derived from the terms of the agreement."

(Citations omitted). *Id.* at 449-450.

{¶19} White argues that the arbitrator in this case “dispensed his own brand of justice” by ignoring the law and facts of the case. She insists the award is internally inconsistent, illogical, and bears no rational nexus to the uncontested facts and law of the case. To illustrate her point, White points to the arbitrator’s finding that Fitch’s poor workmanship included roof installation. The arbitrator awarded damages to fix the “internal results” of that unworkmanlike performance, e.g., to fix the second floor, but failed to award damages to fix the roof itself. White also claims that the arbitrator’s denial of her CSPA claims was in error because Fitch accepted full payment even though he performed shoddy and incomplete work and made multiple misrepresentations to her, which, she argues, was in clear violation of the CSPA.

{¶20} But, as even White acknowledges, “[s]o long as arbitrators act within the scope of the contract, they have great latitude in issuing a decision. An arbitrator’s improper determination of the facts or misinterpretation of the contract does not provide a basis for reversal of an award by a reviewing court, because ‘[i]t is not enough * * * to show that the [arbitrator] committed an error—or even a serious error.’” *Id.* at 449, citing *Stolt-Nielsen, S.A. v. AnimalFeeds Internatl. Corp.*, 559 U.S. 662, 671, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010).

{¶21} We are reminded that “[w]ere the arbitrator’s decision to be subject to reversal because a reviewing court disagreed with findings of fact or with an interpretation of the contract, arbitration would become only an added proceeding and expense prior to

final judicial determination. This would defeat the bargain made by the parties * * *.” *Cedar Fair* at *id.*, citing *Goodyear Tire & Rubber Co. v. Local Union No. 200, United Rubber, Cork, Linoleum & Plastic Workers of Am.*, 42 Ohio St.2d 516, 520, 330 N.E.2d 703 (1975). Here, the parties agreed to binding arbitration. The arbitrator’s award draws its essence from the agreement between the parties; the arbitrator awarded \$28,803 in favor of White, which was an appropriate remedy for a breach of contract.

{¶22} In Ohio, “[w]hen disputing parties agree to submit their controversy to binding arbitration, they agree to accept the result, even if it is legally or factually wrong. * * * If the parties could challenge an arbitration decision on the ground that the arbitrators erroneously decided the legal or factual issues, no arbitration would be binding.” *Miller v. Mgt. Recruiters Internatl., Inc.*, 180 Ohio App.3d 645, 2009-Ohio-236, 906 N.E.2d 1162 (8th Dist.), citing *Huffman v. Valletto*, 15 Ohio App.3d 61, 63, 472 N.E.2d 740 (8th Dist.1984).

{¶23} Although White points to evidence that allegedly demonstrates CSPA violations, she concedes that it is not within this court’s purview to review the evidence submitted at the hearing and contends that she is not asking for such a review to take place. The arbitrator determined that Fitch’s breaches of contract did not rise to the level of CSPA violations and the contractor’s acts were not unconscionable under R.C. 1345.03(A) and (B). As even White concedes, it would be beyond our scope of review to inquire into the arbitrator’s factual determination.

{¶24} In light of the above, the second assignment of error is overruled.

{¶25} In the third assignment of error, White argues that the trial court should have vacated the award because the arbitrator was guilty of misbehavior. According to White, the arbitrator was busy attending to personal business on his computer instead of listening to the evidence being presented during the hearing.

{¶26} As previously mentioned, R.C. 2711.10(C) allows the trial court to vacate an arbitration award if an arbitrator is guilty of “misconduct * * * in refusing to hear evidence pertinent and material to the controversy” or “misbehavior by which the rights of any party have been prejudiced.”

{¶27} “Arbitration awards are entitled to a presumption of regularity and formality, and implicit in this presumption is that the arbitrator acted with integrity.” *Reynoldsburg School Dist. Bd. of Edn. v. Licking Hts. Local School Dist. Bd. of Edn.*, 10th Dist. Franklin No. 11AP-173, 2011-Ohio-5063, ¶ 25.

{¶28} White claims that the arbitrator conducted personal business during the hearing and surmises that he must have ignored the evidence she presented; otherwise the arbitration award would have been higher. She is unable, however, to cite to any specific examples of the arbitrator ignoring evidence in reaching his decision. Nor does she support her position with more than an assertion that she suffered prejudice on account of the arbitrator’s alleged behavior. While this court does not condone what was alleged, using the computer for personal use during the hearing, White has not shown that this supposed action equates with prejudicial misconduct.

{¶29} The third assignment of error is overruled.

{¶30} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR