

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

OHIO FARMERS INSURANCE
COMPANY

C.A. No. 09CA0013-M

Appellant

v.

CITY OF AKRON

Appellee

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 09CIV0150

DECISION AND JOURNAL ENTRY

Dated: March 31, 2010

BELFANCE, Judge.

{¶1} Plaintiff-Appellant, Ohio Farmers Insurance Company, appeals the order of the Medina County Court of Common Pleas in which that court dismissed its application to confirm an arbitration award. For the reasons that follow, we affirm.

I.

{¶2} In 2005, Northern Valley Contractors, Inc. (“Northern”) contracted to be the general contractor for a specific project related to the sewer system owned by Defendant-Appellee, the City of Akron (“Akron”). Due to financial difficulties, the completion of the project was funded by Northern’s performance bond surety, Ohio Farmers Insurance Company (“Ohio Farmers”). Thus, Ohio Farmers became the assignee of any of Northern’s claims concerning the project.

{¶3} In August 2006, a complaint with respect to the project was filed in the Summit County Court of Common Pleas against Northern and Ohio Farmers. The complaint was later

amended to include Akron as a defendant. In May 2007, Ohio Farmers asserted a cross-claim against Akron.

{¶4} Prior to trial of the claim between Ohio Farmers and Akron, Ohio Farmers dismissed a portion of its claim against Akron and the parties agreed to submit Ohio Farmers' remaining claim to binding arbitration. The arbitration was not court-ordered, thus, not governed by the Rules of Superintendence for the Courts of Ohio or the Rules of the Court of Common Pleas, General Division of Summit County, Ohio.

{¶5} On September 3, 2008, an agreed order for arbitration was filed in the Summit County Court of Common Pleas. The agreed order provided that the Summit County Court of Common Pleas would "preserve the case upon the active docket to ensure that the matter is concluded consistent with the following [conditions.]" The stated conditions were that (1) the arbitrators were not to allow additional discovery nor allow additional expert witnesses other than those previously named; (2) arbitration would be heard by a three-member panel no later than November 16, 2008; (3) the panel's written decision was to be issued no later than December 31, 2008; and, (4) the matter would be placed on the Summit County Court of Common Pleas' trial calendar if, "subject [] to" confirmation and any appeal of the award, the matter was not concluded by December 31, 2008. The agreed order was signed by the assigned judge and representatives of Ohio Farmers and Akron.

{¶6} Ohio Farmers and Akron agreed to separate extensions of the deadlines with respect to the hearing date and the date for the arbitrators' decision. The arbitrators issued their decision on January 22, 2009.

{¶7} The following day, on January 23, 2009, Ohio Farmers, a Medina County corporation, filed an application to confirm the arbitrators' award in the Medina County Court of

Common Pleas. Akron filed a motion to dismiss the application on the basis of lack of jurisdiction. The Medina County Court of Common Pleas dismissed Ohio Farmers' application, holding that the parties agreed that the Summit County Court of Common Pleas would have continuing jurisdiction over the matter. Ohio Farmers filed the instant appeal of the dismissal.

II.

{¶8} Ohio Farmers argues that the Medina County Court of Common Pleas erroneously dismissed its application to confirm the arbitration award because (1) the trial court improperly interpreted the language in the agreed journal entry; (2) a confirmation proceeding is a separate and distinct proceeding and; (3) pursuant to R.C. 2711.16, the parties could elect to file an application in the jurisdiction actually designated by the parties or any other jurisdiction authorized under R.C. 2711.16.

{¶9} We review the dismissal of a complaint pursuant to Civ.R. 12 under a de novo standard of review. See *Exchange St. Assoc., LLC v. Donofrio*, 9th Dist. No. 24806, 2010-Ohio-127, at ¶4. Further, we exercise de novo review of a trial court's interpretation of a contract. *Renacci v. Evans*, 9th Dist. No. 09CA0004-M, 2009-Ohio-5154, at ¶13. Although we recognize that Ohio Farmers filed an application with the Medina County Court of Common Pleas rather than a complaint, we conclude under the circumstances of this case it is appropriate to apply a de novo standard of review. The de novo standard requires us to independently review the trial court's decision without deference to its determination. (Citation omitted.) *Coon v. Technical Constr. Specialties, Inc.*, 9th Dist. No. 24542, 2010-Ohio-417, at ¶9.

{¶10} The central question before this Court is whether the trial court committed reversible error in its interpretation of the language contained in the parties' agreed entry. In examining that language, the trial court reasoned that, notwithstanding arbitration law, "the

overriding factor in this case is that the parties clearly agreed to have the Summit County Court of Common Pleas maintain continuing jurisdiction over this case. The entry even goes so far as to specifically indicating [sic] that the case will be preserved on the Court's active docket." (Emphasis omitted.) Accordingly, the trial court concluded that it could find no compelling reason to completely ignore the parties' own agreement.

{¶11} In examining the agreed entry, we agree with the trial court's interpretation of that document. Ohio Farmers and Akron were involved in litigation in the Summit County Court of Common Pleas. As they were poised to go to trial on a remaining issue, the parties agreed to submit that issue to binding arbitration. Toward that end, the parties submitted an agreed journal entry in which they acknowledged their desire to submit the dispute to arbitration upon certain conditions and "requested that the Court preserve the case upon the active docket to ensure that the matter is concluded consistent with the [stated conditions]." Those conditions included an agreement that discovery was closed; the matter was to be heard by the arbitration panel no later than November 28, 2008; and the arbitration panel would issue its decision and award within 45 days, and in no event after December 31, 2008. Finally, the parties agreed that if the matter was not concluded on or before December 31, 2008, *subject only* to confirmation of the award and any appeal, the matter would be placed back on the trial calendar.

{¶12} In examining this language, it is apparent that the parties were concerned about the timely conclusion of the matter whether by trial or through arbitration. They agreed to submit the matter to arbitration only if the matter could be concluded by December 31, 2008. However, the December 31, 2008, deadline did not apply to confirmation of the award or any appeal that might arise. Thus, while they were concerned about concluding the arbitration by December 31, 2008, they decided to exclude from the strict time frame any additional time for

either confirmation of the award and any appeal. Finally, the parties expressly stated that they wished the trial court to maintain the matter on its active docket. We agree with the trial court that the agreed journal entry, when viewed in its entirety, evidences the parties' understanding that the Summit County Court of Common Pleas would exercise continuing jurisdiction over the matter for all stages of the litigation and arbitration, including confirmation and an appeal. Thus, we cannot find any error in the trial court's interpretation of the parties' agreed journal entry.

{¶13} Ohio Farmers bases its argument that the trial court erroneously interpreted the parties' agreed journal entry upon two underlying premises. The first premise contained in Ohio Farmers' merit brief is that the parties requested that the trial court maintain the case on its active docket during the pendency of the arbitration for the "limited and sole purpose of timely concluding the matter." The second premise is Ohio Farmers' contention that the parties' exclusion of confirmation of the arbitration award and any appeal from the strict 45-day time frame is evidence that the court's jurisdiction was to somehow terminate immediately upon issuance of the arbitration decision.

{¶14} We do not agree with either premise. Notably, the agreed entry does not contain any language delineating the retention of the court's jurisdiction for the "limited and sole purpose" of timely concluding the matter. And although Ohio Farmers implies that "the matter" consisted only of the actual arbitration and not confirmation of the award, the agreement did not make such a distinction. Furthermore, even though it is apparent that the parties did desire to either timely arbitrate the matter or go to trial, there is no suggestion that this intention coincided with any limitation of the trial court's continuing jurisdiction over the matter. It is clear that by requesting that the Summit County Court of Common Pleas maintain the matter on its active docket, the parties desired to maintain the continuing jurisdiction of the court. The parties'

journal entry evidences a desire for the parties to streamline the arbitration process so that they would either resolve the matter within 45 days or if not, they could immediately go to trial. Further, the journal entry made clear that the 45-day period for measuring whether the matter would either be resolved via arbitration or whether it would go to trial, would not include any additional time that it would take to either confirm the award or engage in an appeal. There is no language in the entry that purports to limit the continuing jurisdiction of the Summit County Court of Common Pleas over the matter. If anything, the language reflects an understanding that the entire process would take place under the continuing jurisdiction of the Summit County Court of Common Pleas.

{¶15} Ohio Farmers further argues that even if the parties’ agreed journal entry did evidence an agreement for the Summit County Court of Common Pleas to retain jurisdiction over the confirmation proceeding, R.C. 2711.16 permits a party to file a separate action for a confirmation proceeding in the appropriate jurisdiction designated in the statute. R.C. 2711.16 states:

“Jurisdiction of judicial proceedings provided for by sections 2711.01 to 2711.14, inclusive, of the Revised Code, is generally in the courts of common pleas, and actions and proceedings brought under such sections shall be brought either in the court of common pleas of the county designated by the parties to the arbitration agreement as provided in section 2711.08 of the Revised Code, which designation is an irrevocable consent of the parties thereto to such jurisdiction, or, whether or not such designation has been made, in the court of common pleas of any county in which a party in interest resides or may be summoned, or if any party in interest is a corporation, in any county in which such corporation is situated, or has or had its principal office or place of business, or in which such corporation has an office or agent, or in any county in which a summons may be served upon the president chairman or president of the board of directors or trustees or other chief officer.”

{¶16} Even if Ohio Farmers’ reading of the statute is accurate, R.C. 2711.16 does not authorize parties to repudiate their agreements. At best, R.C. 2711.16 would apply where the

parties to an arbitration agreement had generally stipulated to a permissible forum for arbitration and confirmation but had not actually agreed in any way to *limit* their jurisdiction to a particular forum. This is similar conceptually to contracts with clauses containing permissive or mandatory forum selection clauses. In a case where the clause is permissive rather than mandatory, we have held that the parties to such an agreement have the option of filing the action in the jurisdiction stated in the contract or in another jurisdiction as permitted by the civil rules. *EI UK Holdings, Inc. v. Cinergy UK, Inc.*, 9th Dist. No. 22326, 2005-Ohio-1271, at ¶¶20-21 (holding that, absent a clear expression by the parties to a contract, a clause that permits jurisdiction in a particular forum does not limit jurisdiction to that forum); see, also, *Renacci* at ¶20.

{¶17} Ohio Farmers seems to imply that even where the parties have evidenced an agreement to limit jurisdiction to a particular forum, R.C. 2711.16 nonetheless permits a party to act in contravention to the agreement. We do not believe the legislature intended such a result. Were that so, the basic principles underlying the law of contracts would be completely undermined as parties would not be able to trust in the agreements they make.

{¶18} Furthermore, Ohio Farmers ignores the context in which the agreed entry was formed. This is not a situation in which the parties were negotiating the terms of an arbitration agreement for use in the future with a permissive arbitration clause. Instead, the arbitration ensued in the context of an ongoing case over which the trial court already had jurisdiction. It is clear that the parties were poised to go to trial and that they essentially bargained for the terms under which they would submit the matter to arbitration in lieu of going to trial. Under such circumstances, it was incumbent upon Ohio Farmers to clearly specify that one of the terms of that bargain would be that upon completion of the arbitration, the continuing jurisdiction of the Summit County Court of Common Pleas would immediately terminate and that it could seek

confirmation in another forum. Had it done so, it is possible that Akron would not have even agreed to proceed with arbitration at all and instead simply elected to go to trial.

{¶19} In this case, the agreed entry evidenced the parties' understanding that the Summit County Court of Common Pleas would retain continuing jurisdiction over the matter, including confirmation and appeal of the matter. Consequently, we find no error and affirm the judgment of the trial court.

III.

{¶20} Ohio Farmers Insurance Company's sole assignment of error is overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

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