

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

LIZABETH BINNS

C. A. No. 25149

Appellant

v.

STERLING JEWELERS, INC.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2006 08 5439

Appellee

DECISION AND JOURNAL ENTRY

Dated: July 21, 2010

WHITMORE, Judge.

{¶1} Appellant, Lizabeth Binns, appeals from the judgment of the Summit County Court of Common Pleas, denying her motion to vacate or, in the alternative, to modify an arbitration order. This Court affirms.

I

{¶2} Binns worked for Sterling Jewelers, Inc. (“Sterling”) until the company terminated her employment in August 2005. On August 30, 2006, Binns filed a suit against Sterling for wrongful discharge. Sterling filed a motion to stay the matter pending arbitration, arguing that Binns had agreed to be bound by its mandatory dispute resolution program. Binns did not respond to Sterling’s motion. On November 8, 2006, the trial court stayed the matter for arbitration.

{¶3} On June 20, 2008, Binns filed a motion to vacate the arbitrator’s order/award or, in the alternative, to modify it. She attached an order from an arbitrator, dated March 20, 2008,

to her motion. In the order, the arbitrator dismissed Binns' claim against Sterling because she failed to file a claim form within one year of the alleged wrongful conduct, as required by Sterling's dispute resolution program. Sterling filed a motion in opposition to Binns' motion to vacate. On November 4, 2008, the court denied Binns' motion.

{¶4} On December 3, 2008, Binns filed a notice of appeal. This Court dismissed the appeal for lack of a final, appealable order. *Binns v. Sterling Jewelers, Inc.*, 9th Dist. No. 24522, 2009-Ohio-3359. Binns filed an application to confirm the arbitration award at issue on September 15, 2009 and again on October 23, 2009 due to a defective service issue. The trial court confirmed the arbitrator's award on November 20, 2009.

{¶5} Binns now appeals from the trial court's order, denying her motion to vacate or, in the alternative, to modify the arbitration order. She raises one assignment of error for our review.

II

Assignment of Error

“THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT’S MOTION TO VACATE ARBITRATOR’S ORDER/AWARD OR IN THE ALTERNATIVE MOTION TO MODIFY.”

{¶6} In her sole assignment of error, Binns argues that the trial court erred by denying her motion to vacate or, in the alternative, to modify the arbitration order. Specifically, she argues that the arbitrator imperfectly executed his powers by not considering a case she cited in her argument before the arbitrator.

{¶7} Initially, we note that Binns has not set forth a standard of review. Loc.R. 7(B)(7). A review of an arbitration award, at both the trial and appellate level, is extremely limited and deferential. See *Technigraphics, Inc. v. MIT, L.L.C.*, 9th Dist. No. 09CA0005, 2010-

Ohio-2946, at ¶9. A trial court's review does not encompass a review of the actual merits, and an appellate court only looks to the trial court's order to determine if an error of law occurred. *Id.* Further, "[m]ere error in the interpretation or application of the law will not suffice [to vacate an arbitration award]. The arbitrators' decision must fly in the face of clearly established legal precedent to support a vacation of the award." (Internal quotations and citations omitted.) *Summit Cty. v. Cuyahoga Falls*, 9th Dist. No. 21799, 2004-Ohio-1879, at ¶7, quoting *Automated Tracking Systems, Inc. v. Great Am. Ins. Co.* (1998), 130 App.3d 328, 244.

{¶8} Binns has not pointed this Court to any legal authority in support of her assertion that the trial court made an error of law. "[T]he court of common pleas shall make an order vacating the award *** if *** [t]he arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." R.C. 2711.10(D). Binns asserts, without any support, that an arbitrator imperfectly executes his powers when he issues an order without explicitly discussing the merits and/or applicability of a case relied upon by one of the parties. This Court will not develop an argument on the behalf of an appellant when he or she fails to do so. *Cardone v. Cardone* (May 6, 1998), 9th Dist. No. 18349, at *8 ("If an argument exists that can support this assignment of error, it is not this court's duty to root it out."). It is the duty of the appellant to support his or her argument with citations to applicable legal authority. App.R. 16(A)(7). The trial court acknowledged the deficiency of Binns' argument, but nonetheless considered it on the merits. The court concluded that, although the arbitrator did not mention the case Binns raised by name, the arbitrator implicitly addressed the case by analyzing the issue with which the case dealt. There is nothing in the record to suggest that the trial court erred by concluding that the arbitrator's decision does not "fly in the face of clearly established legal precedent." *Summit Cty.* at ¶7. Nor does Binns challenge the

trial court's conclusion that the arbitrator in fact analyzed the issue that Binns sought to raise. See App.R. 16(A)(7). Binns' argument that the court erred by refusing to vacate the arbitration award lacks merit.

{¶9} Binns also argues that the court erred by refusing to modify the arbitration award. Her argument, however, is that the award did not address the merits of the controversy. Neither the trial court's review, nor this Court's review encompasses a review of the actual merits. *Technographics, Inc.* at ¶9. Therefore, Binns cannot challenge the arbitration award on this basis. Binns' sole assignment of error is overruled.

III

{¶10} Binns' sole assignment of error is overruled. The judgment of the Summit 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 Summit, 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.

BETH WHITMORE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

ERIC D. HALL, Attorney at Law, for Appellant.

STEPHEN S. ZASHIN, and B. JASON ROSSITER, Attorneys at Law, for Appellee.