

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

ADAM REMILLARD, et al.,	:	CASE NO. CA2026-01-008
Appellees,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	10/5/2026
DF CONSTRUCTION COMPANY LLC	:	
dba DIYANNI HOMES,	:	
Appellant.	:	
	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 25CV98372

Kohl & Cook Law Firm, LLC, and Timothy J. Cook and Nicholas F. Stemmer, for appellees.

Bailey Cavalieri LLC, and Christopher W. Tackett and Kevin R. Kelleher, for appellant.

OPINION

SIEBERT, J.

{¶ 1} Appellant, DF Construction Company, appeals from a decision of the Warren County Court of Common Pleas denying its motion to vacate an arbitration award

entered in favor of appellees, Adam and Erin Remillard, and granting the Remillards' application to confirm and enforce that award.

{¶ 2} After reviewing the limited record before us, we find no basis for vacating the arbitration award. DF failed to demonstrate evident partiality on the part of the arbitrator, and its challenge to the contractual notice-and-cure provision amounts to a disagreement with the arbitrator's interpretation of the parties' agreement. We further find that the trial court acted within its authority in awarding the Remillards the attorney fees they incurred in defending and enforcing the arbitration award. Accordingly, we affirm the trial court's decision.

I. Facts and Procedural History

A. The Construction Contract

{¶ 3} On October 26, 2021, the Remillards entered into a contract with DF for the construction of a new residence. The contract required DF to use commercially reasonable efforts to begin construction approximately 45 days after the construction-loan closing and to complete the residence within 210 days after excavation. The contract also required disputes to be submitted to binding arbitration before the American Arbitration Association ("AAA") and contained a 60-day notice-and-cure provision.

{¶ 4} The construction loan closed on December 29, 2021. Although construction was anticipated to begin approximately 45 days later, DF did not commence excavation until July 26, 2022—209 days after the construction loan closed. DF did not complete the residence until October 12, 2023—443 days after excavation.

{¶ 5} On August 31, 2023, the Remillards sent DF a letter advising that construction remained incomplete and had substantially exceeded the anticipated completion date. They also identified various problems resulting from the delay and stated that they had expected to occupy the residence by February 2023.

B. The Arbitration Proceedings

{¶ 6} On June 3, 2024, the Remillards initiated arbitration before the AAA, seeking damages arising from the delay. When none of the arbitrators initially identified through the selection process were available, the AAA appointed Richard Hamilton as arbitrator.

{¶ 7} DF objected to Hamilton's appointment because he had previously served as a mediator in a separate construction-delay dispute involving DF and counsel for the Remillards. DF asserted that Hamilton had received confidential information during that mediation that created a conflict. After receiving briefing from the parties, the AAA rejected DF's objection and confirmed Hamilton's appointment.

{¶ 8} On November 22, 2024, Hamilton issued a final arbitration award to the Remillards. In so doing, Hamilton determined that construction exceeded the contractual completion deadline by 397 days, 317 of which were unexcused. Hamilton awarded the Remillards \$37,209.70 in damages for expenses resulting from the delay and further found that DF knowingly violated the Home Construction Service Suppliers Act ("HCSSA"), R.C. Chapter 4722.¹ Based upon that finding, Hamilton also awarded the Remillards \$23,223.78 in attorney fees pursuant to R.C. 4722.08(D)(2).

C. Trial Court Proceedings

{¶ 9} The Remillards subsequently filed an application in the trial court to confirm and enforce the arbitration award and requested attorney fees incurred in the confirmation proceedings. DF opposed the application and moved to vacate the award. Following a hearing, the magistrate denied DF's motion to vacate, granted the Remillards' application to confirm and enforce the award, and scheduled a further hearing on the request for

1. The award included damages for additional mortgage interest, lost rental income, utility expenses, and noneconomic damages resulting from the delay.

supplemental attorney fees. DF filed objections, which the trial court overruled.

{¶ 10} After a separate hearing, the magistrate awarded the Remillards \$13,431.50 in supplemental attorney fees. DF again objected. The trial court partially sustained the objections and reduced the supplemental attorney-fee award to \$12,346.00.

{¶ 11} DF now appeals, raising two assignments of error.

II. Appeal

A. Motion to Vacate Arbitration Award

{¶ 12} In its first assignment of error, DF argues the trial court erred by denying its motion to vacate the arbitration award.

{¶ 13} Arbitration is a favored method of dispute resolution. *Buchholz v. W. Chester Dental Group*, 2008-Ohio-5299, ¶ 14 (12th Dist.). The purpose of enforcing an arbitration award is to honor the parties' agreement to resolve their disputes outside the traditional court-based litigation process. *Hogan v. Hogan*, 2008-Ohio-6571, ¶ 15 (12th Dist.). By agreeing to binding arbitration, parties agree to accept the arbitrator's decision even when they believe the arbitrator committed factual or legal errors. *Id.*

{¶ 14} Because arbitration is encouraged, judicial review of arbitration awards is limited. *Ohio Patrolmen's Benevolent Assn. v. Trenton*, 2013-Ohio-3311, ¶ 18 (12th Dist.). A common pleas court's review is confined to the statutory grounds for vacating, modifying, or correcting an award set forth in R.C. 2711.09 through 2711.14. *Buchholz* at ¶ 15.

{¶ 15} R.C. 2711.10 permits a court to vacate an arbitration award when:

(A) The award was procured by corruption, fraud, or undue means.

(B) There was evident partiality or corruption on the part of the arbitrators, or any of them.

(C) The arbitrators were guilty of misconduct in . . . refusing to hear evidence . . . or of any other misbehavior by which the rights of any party have been prejudiced.

(D) 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.

{¶ 16} An appellate court's review of a common pleas court's arbitration order is confined to the court's order confirming, modifying, vacating, or enforcing the award. *In re Hamilton v. Intl. Union of Operating Engineers, Local 20*, 2016-Ohio-5565, ¶ 12 (12th Dist.). This court accepts factual findings that are not clearly erroneous but reviews questions of law de novo. *Portage Cty. Bd. of Dev. Disabilities v. Portage Cty. Educators' Assn. for Dev. Disabilities*, 2018-Ohio-1590, ¶ 23. This limited review does not permit us to reconsider the merits of the underlying dispute or substitute our judgment for that of the arbitrator. *Fairfield v. Internatl. Union of Operating Eng.*, *Local 20*, 2024-Ohio-2850, ¶ 14 (12th Dist.); *Plum Tree Realty v. Huff-Drees Realty*, 2024-Ohio-4960, ¶ 12 (12th Dist.).

1. Evident Partiality or Corruption

{¶ 17} DF first argues that the arbitration award should be vacated under R.C. 2711.10(B) because of evident partiality or corruption on the part of Hamilton. DF relies on Hamilton's prior service as a mediator in a separate construction-delay dispute involving DF and counsel for the Remillards.

{¶ 18} To establish evident partiality under R.C. 2711.10(B), a party must present evidence demonstrating actual bias or circumstances giving rise to a legitimate question of bias. *Mason v. Mason Professional Firefighters, IAFF Local 4049*, 2016-Ohio-7194, ¶ 12 (12th Dist.), citing *Reynoldsburg City School Dist. Bd. of Edn. v. Licking Hts. Local School Dist. Bd. of Edn.*, 2011-Ohio-5063, ¶ 25 (10th Dist.). Mere speculation or suspicion

regarding a potential conflict is insufficient. *Mason Professional Firefighters* at ¶ 12.

{¶ 19} DF failed to make that showing. Although DF asserted that Hamilton had previously mediated a matter involving DF and Remillards' counsel, it did not identify any specific confidential information Hamilton allegedly received, explain how that information was relevant to this dispute, or demonstrate that Hamilton relied upon it in reaching his decision. Nor did DF identify any conduct by Hamilton during the arbitration suggesting that Hamilton was biased or partial. Instead, DF's argument rests on conclusory assertions and speculation that Hamilton's prior involvement in an unrelated proceeding may have influenced his decision in this case. Such speculation does not establish evident partiality under R.C. 2711.10(B).

{¶ 20} Furthermore, DF did not provide a transcript of the arbitration hearing. We therefore must presume the regularity of those proceedings. *Buchholz*, 2008-Ohio-5299, at ¶ 38 (12th Dist.); *Plum Tree Realty*, 2024-Ohio-4960, at ¶ 14 (12th Dist.). In the absence of a transcript, there is no basis for concluding that Hamilton relied upon information outside the arbitration record, exhibited bias during the proceedings, or otherwise conducted the arbitration in a manner that prejudiced DF.

{¶ 21} The cases cited by DF do not require a different result. In *Mason Professional Firefighters*, this court considered an undisclosed relationship between the arbitrator and a nonparty organization whose interests were substantially connected to the arbitration. *Id.*, 2016-Ohio-7194, at ¶ 14 (12th Dist.). Similarly, in *Close v. Motorists Mut. Ins. Co.*, 21 Ohio App.3d 228, 230 (10th Dist. 1985), the arbitrator was a partner in a law firm that maintained a substantial and continuing attorney-client relationship with a party to the arbitration. Here, by contrast, DF identified only Hamilton's prior service as a mediator in an unrelated matter. It presented no evidence of an ongoing relationship between Hamilton and any party or that Hamilton had otherwise compromised his

impartiality in the present matter. Thus, this case is unlike the circumstances presented in either *Mason Professional Firefighters* or *Close*.

{¶ 22} DF's reliance on *In re Cartwright*, 104 S.W.3d 706 (Tex.App. 2003), is similarly misplaced. Unlike the circumstances discussed in *Cartwright*, Hamilton did not serve as both a mediator and arbitrator in the same dispute. See *id.* at 713-714. Hamilton mediated a separate matter, and DF presented no evidence that information from that earlier mediation affected his conduct or decision in this case. Moreover, *Cartwright* is an out-of-state case involving very different facts. The court in *Cartwright* also discussed circumstances in which the parties could agree to have the same individual serve as both the mediator and arbitrator. *Cartwright* at 714. Therefore, we do not find *Cartwright* controlling nor particularly instructive in resolving the issue before us.

{¶ 23} On appeal, DF maintains that once it objected to Hamilton's appointment, the AAA should have provided a new list of candidates and restarted the arbitrator-selection process. According to DF, the AAA's failure to do so amounted to a "procedural assault that denied [DF] the process they bargained for when giving up their due process rights in favor of mandatory AAA arbitration." The record, however, reflects that the parties agreed to AAA arbitration and that the AAA appointed Hamilton after the arbitrators initially identified through the selection process were unavailable. DF identifies no provision of the parties' agreement or the applicable AAA rules requiring the AAA to restart the selection process under these circumstances. Nor, in any event, does the record establish evident partiality or corruption on Hamilton's part.

{¶ 24} Ultimately, DF's argument rests on the premise that Hamilton's prior service as a mediator in an unrelated dispute disqualified him from serving as arbitrator in this matter. We find no merit to this argument. Under these circumstances, DF failed to establish evident partiality or corruption under R.C. 2711.10(B), and the trial court

properly denied DF's motion to vacate on that basis.

2. Notice-and-Cure Provision

{¶ 25} DF next argues that the arbitration award should be vacated because the Remillards failed to comply with the contract's 60-day notice-and-cure provision before initiating arbitration. In support of its argument, DF relies upon provisions of the parties' agreement concerning alleged construction defects and a contractor's opportunity to cure. The contract stated, in essence, that Ohio law required written notice of alleged construction defects at least 60 days before initiating litigation or arbitration and provided DF with an opportunity to investigate, evaluate, and respond to such claims. The agreement further provided that arbitration would occur only after the Remillards had afforded DF a right to cure.

{¶ 26} This argument also fails. Although arbitration is a matter of contract and an arbitrator derives his authority from the parties' agreement, a court may not vacate an award merely because it disagrees with the arbitrator's interpretation or application of that agreement. *Global Pacific, L.L.C. v. Kirkpatrick*, 2017-Ohio-1332, ¶ 14 (12th Dist.); *Hogan*, 2008-Ohio-6571, at ¶ 15 (12th Dist.). The relevant question is whether the arbitrator acted within the authority granted by the parties.

{¶ 27} Here, the applicability and satisfaction of the notice-and-cure provision presented questions of contract interpretation. DF argues on appeal that the Remillards were required to provide additional notice before initiating arbitration and that the correspondence the Remillards sent did not satisfy the contract. However, as noted above, DF has not provided a transcript of the arbitration proceedings. We therefore cannot review the evidence or arguments presented to the arbitrator concerning the notice requirement and must presume the regularity of the proceedings. *Buchholz*, 2008-Ohio-5299, at ¶ 38 (12th Dist.); *Plum Tree Realty*, 2024-Ohio-4960, at ¶ 14 (12th Dist.).

{¶ 28} Despite this, we can nevertheless ascertain that the arbitration award bears a direct and rational relationship to the parties' agreement. An arbitration award draws its essence from the parties' agreement when there is a rational nexus between the agreement and the award. *Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities v. Mahoning Cty. TMR Educ. Assn.*, 22 Ohio St.3d 80, 84 (1986); *Carothers v. Shumaker, Loop & Kendrick, L.L.P.*, 2023-Ohio-1907, ¶ 22 (6th Dist.). When an award draws its essence from the parties' agreement, it must be upheld. *Carothers*.

{¶ 29} The award in this case plainly satisfies that standard. The arbitrator determined that DF failed to complete construction within the time frame required by the parties' agreement and awarded damages resulting from that delay. DF nevertheless argues that the notice-and-cure provisions constituted a contractual limitation on the arbitrator's authority and that the arbitrator exceeded his powers by permitting the arbitration to proceed despite the alleged failure to satisfy those provisions. However, whether the notice-and-cure provisions applied to the Remillards' claims and whether any contractual notice requirements were satisfied were themselves questions of contract interpretation committed to the arbitrator's determination.

{¶ 30} Ultimately, DF's challenge is an attack on the arbitrator's resolution of the notice issue rather than the arbitrator's authority to resolve that issue. Because the applicability and satisfaction of the notice-and-cure provisions were matters committed to the arbitrator's determination, DF has failed to demonstrate that the arbitrator exceeded his powers under R.C. 2711.10(D) or that any other statutory basis for vacatur exists. Accordingly, the trial court did not err in denying DF's motion to vacate the arbitration award on this basis. DF's first assignment of error is overruled.

B. Supplemental Attorney Fees

{¶ 31} In its second assignment of error, DF argues that the trial court lacked

authority to award the Remillards the attorney fees they incurred in the post-arbitration proceedings under the HCSSA. More specifically, DF contends that once arbitration concluded, the trial court's authority was limited to that conferred by R.C. Chapter 2711. Because R.C. Chapter 2711 contains no provision authorizing attorney fees incurred defending or confirming an arbitrator's award, DF argues that the supplemental fee award exceeded the court's authority.

{¶ 32} R.C. 2711.14 provides that a judgment entered upon confirmation of an arbitration award "shall have in all respects the same effect as, and be subject to all laws relating to, a judgment in an action" and may be enforced as though rendered in a civil action. Thus, although R.C. Chapter 2711 provides the procedural mechanism for confirming and enforcing an arbitration award, the resulting judgment is treated as a civil judgment. Accordingly, the issue is not whether R.C. Chapter 2711 independently authorizes attorney fees, but whether the underlying statute creating the substantive right to attorney fees permits recovery of fees incurred enforcing the resulting judgment.

{¶ 33} The critical flaw in DF's argument is that the supplemental fee award was not awarded pursuant to R.C. Chapter 2711. Rather, the award was derived from the HCSSA, under which the arbitrator had already determined that DF knowingly violated the statute, and that the Remillards were entitled to attorney fees.

{¶ 34} In *Norman v. Kellie Auto Sales, Inc.*, 2024-Ohio-5452 (10th Dist.), the Tenth District considered whether a prevailing consumer could recover attorney fees incurred in successfully defending and enforcing an arbitration award. *Id.* at ¶ 23. The court held that such fees were recoverable where the underlying fee entitlement arose under the Ohio Consumer Sales Protection Act ("OCSPA"). *Id.* at ¶ 23-26. In reaching that conclusion, the court emphasized that a judgment confirming an arbitration award has, under R.C. 2711.14, "the same effect as" a judgment entered in a civil action and may be

enforced as though rendered in that action. *Id.* at ¶ 23. The court further concluded that denying attorney fees merely because the prevailing party was required to arbitrate the underlying statutory claim would undermine the remedial purposes of the OCSPA. *Id.* at ¶ 26.

{¶ 35} The reasoning in *Norman* applies here. The attorney-fee provision at issue in *Norman* is similar to the provision contained in the HCSSA, insofar as both statutes authorize an award of reasonable attorney fees upon a finding of a knowing statutory violation. Compare R.C. 1345.09(F)(2) with R.C. 4722.08(D)(2). The arbitrator determined that DF knowingly violated the HCSSA and awarded attorney fees pursuant to that statute. The Remillards did not seek attorney fees under R.C. 2711 itself. Rather, they sought compensation for fees incurred defending and enforcing rights that had already been established through arbitration.

{¶ 36} DF's reliance on *Mark L. Kaser Corp. v. Pope*, 1998 WL 842823 (12th Dist. Dec. 7, 1998), does not compel a different result. In *Kaser*, this court held that a trial court lacked authority to consider a Civ.R. 11 sanctions claim that was independent of the arbitration award. *Id.* at *2-*3. The supplemental attorney fees at issue here are materially different. They do not arise from a new claim independent of the arbitration proceedings; rather, they arise directly from the Remillards' efforts to preserve, defend, and enforce the arbitration award.

{¶ 37} Moreover, *Kaser* recognized that relief independently authorized by statute may be awarded following confirmation of an arbitration award. There, this court affirmed an award of prejudgment interest under R.C. 1343.03. *Id.* at *3. Thus, *Kaser* does not establish that a trial court is categorically prohibited from awarding statutory relief after confirming an arbitration award. Accepting DF's argument would create a significant gap in the HCSSA's fee-shifting scheme. Under DF's view, a prevailing homeowner could

recover attorney fees incurred obtaining relief under the HCSSA through arbitration yet be unable to recover fees necessarily incurred preserving and enforcing that relief once the award was challenged in court. Neither the remedial purpose of the HCSSA nor R.C. 2711.14 supports such a result. See *Norman* at ¶ 26.

{¶ 38} Applying these principles, we conclude that the trial court acted within its authority in awarding supplemental attorney fees to the Remillards. The arbitrator found that the Remillards were entitled to attorney fees under the HCSSA, and the trial court assessed reasonable fees incurred in the proceedings necessary to confirm and enforce that award. The trial court did not revisit the merits of the dispute, modify the arbitration award, or make a new determination that DF violated the HCSSA. Those issues had already been decided by the arbitrator. The court determined only the amount of reasonable attorney fees incurred in proceedings necessary to defend and enforce the existing award.

{¶ 39} Under these circumstances, the supplemental fee award was ancillary to the enforcement of rights previously established through arbitration and did not constitute an improper exercise of authority over matters committed to arbitration. Accordingly, the trial court acted within its authority in awarding the Remillards \$12,346.00 in supplemental attorney fees.

{¶ 40} DF's second assignment of error is overruled.

III. Conclusion

{¶ 41} DF failed to establish any statutory basis for vacating the arbitration award. Its challenge to Hamilton's impartiality is unsupported by evidence of actual bias or evident partiality, and its challenge to the notice-and-cure provision concerns the arbitrator's interpretation and application of the parties' agreement rather than an excess of authority. The trial court also acted within its authority in awarding the Remillards the

attorney fees they incurred in defending and enforcing the arbitration award.

{¶ 42} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Robin N. Piper, Presiding Judge

/s/ Mike Powell, Judge

/s/ Melena S. Siebert, Judge