

71503-8

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No. 71503-8-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

Darling Sons International, LLC

Respondent

v.

DeAtley Bros., LLC, et al

Appellants

FILED
COURT OF APPEALS
DIVISION ONE
JAN 28 2008
SEATTLE, WA

BRIEF OF RESPONDENT

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I. ISSUES

1. Did the trial court correctly enter judgment in favor of the respondent when the appellants, who requested trial de novo from multiple arbitration awards against them, failed to confirm the case for trial in violation of the Snohomish County Local Rules?
 - a. Is the Snohomish County Superior Court entitled to enforce its own local rules which do not conflict in any respect with the state court rules?
 - b. Do the cases cited by the appellants in their opening brief have any application to the issues now before this court?

II. STATEMENT OF THE CASE

This matter proceeded through mandatory arbitration under the Superior Court Mandatory Arbitration Rules. The matter was heard by arbitrator Lisa Micheli in September, 2012. Ms. Micheli issued two arbitration awards in favour of the respondent, the first in the amount of \$55,685.05 and then a supplemental award in the amount of \$17,691.00 for attorney fees and \$874.30 for costs. CP 14.

Appellants filed a request for trial de novo. Trial was set by the court for January 6, 2014. CP 14.

The appellants did not confirm the case for trial as required by SCLCR 40(c). Pursuant to SCLMAR 7.2(b), if the matter is not confirmed for trial, the opposing party may request entry of judgment on the arbitrator's award. The respondent made a motion for entry of judgment and the court entered judgment on the arbitration awards. CP 1-3.

The appellants have appealed entry of judgment confirming the arbitration awards. Citing various decisions which have been decided in our appellate courts under the discovery rules (CR 26 through CR 37), appellants argue that court commissioner who entered judgment in this matter was obligated to apply the same analysis that our appellate courts have applied when considering discovery sanctions. That is, appellants argue that the court was required to search for "a less severe sanction" before entering judgment in favour of the respondent.

III. ARGUMENT

A. SNOHOMISH COUNTY SUPERIOR COURT JUDGES AND COMMISSIONER INTERPRET AND ENFORCE THE SNOHOMISH COUNTY LOCAL RULES AND THAT INTERPRETATION AND ENFORCEMENT WILL NORMALLY NOT BE DISTURBED BY THE APPELLATE COURT

As a starting point, when there is an issue of interpretation of a local rule by the trial court, that trial court is in the best position to interpret and apply the rule. The trial court's interpretation will normally not be disturbed by the appellate court. Snyder v. State, 19 Wn.App. 631, 577 P.2d 160 (1978).

The superior court mandatory arbitration rules specifically authorize and direct that local rules shall be implemented to establish a procedure for transfer of a case from the arbitration calendar to the trial calendar. See MAR 7.1(d). Snohomish County has adopted local rules as required by MAR 7.1(d), establishing a process for transferring cases to the trial calendar and confirming those cases for trial. SCLMAR 7.1(b)(1) and SCLMAR 7.1(b)(3). Pursuant to these rules, appellants noted the case for trial and the court set a trial date for January 6, 2014.

When a case is set for trial, SCLCR 40(c)(1) requires the case to be confirmed for trial no sooner than twelve noon the first day of the week and no later than twelve noon the last court day of the week two weeks prior to trial. If the case is not confirmed for trial, the opposing party may move for entry of judgment on the arbitrator's award. SCLMAR 7.2(b). The purpose of these rules, of course, is to allow the court to properly manage and administer its calendar. There is no argument or suggestion by the appellants that Snohomish County lacked authority to draft these rules. In fact, the court was obligated to create a local rule for transfer of these appeals from an arbitration award to the trial calendar. See MAR 7.1(d).

The primary goal of the statutes providing for mandatory arbitration under the mandatory arbitration rules is to reduce congestion in the courts and delays in hearing civil cases. Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 79 P.3d 1154 (2003); Dill v. Michelson Realty Co., 152 Wn.App 815, 219 P.3d 726 (2009). The superior court rules were drafted and are implemented to accomplish those purposes.

The court's decision in this case was consistent with the rules of Snohomish County Superior Court and the purposes of the mandatory arbitration rules. The respondent in this case was entitled to the relief requested. The court was authorized and justified in entering judgment, the appellants having failed to confirm the case for trial.

**B. THE CASES CITED BY APPELLANTS IN THEIR
OPENING BRIEF DO NOT SUPPORT THE RELIEF THAT THEY
HAVE REQUESTED**

In support of their argument that Commissioner Stewart erred in entering judgment in this matter, appellants cite various cases which were decided by the appellate courts. All of the cases cited by the appellants dealt with the obligation of the court to consider various sanctions in the context of discovery violations. Those cases have no application.

Each of the cases cited by the appellants involves an analysis of the court's authority under the discovery rules, CR 22 through CR 37. Rivers v. Washington State Conference of Mason Contractors, 145 Wn.2d 674, 41 P.3d 1175 (2002) (failure to respond to interrogatories and request for production); Magana v. Hyundai Motor America, 167 Wn.2d 570, 520 P.3d 191 (2009)

(failure to respond to requests for production, wilful spoliation of evidence, and failure to properly answer interrogatories); Burnet v. Spokane Ambulance, 131 Wn.2d 484, 933 P.2d 1036 (1997) (limitation of discovery on issues not properly pled); Smith v. Behr Process Corp., 113 Wn.App 306, 54 P.3d 665 (2002) (failure to timely disclose witnesses and evidence). Each of these cases analyze the trial court's decision under CR 37. CR 37 contains a specific hierarchy of potential sanctions which may be imposed by the court for failure to make discovery. See CR 37(b)(2). The cases cited by the appellants all involve discovery motions and an analysis of appropriate sanctions to be imposed.

This case does not involve failure to make discovery. In fact, the parties in our case were required to complete discovery 35 days before the assigned trial date. SCLCR 26(k).

The purpose of SCLMAR 7.2 is to carry out the mandate of RCW 7.06. The purpose of mandatory arbitration is to provide an expeditious conclusion of arbitrable matters. The court's ruling is consistent with that mandate. The court was not obligated under any appellate authority to consider "sanctions" and entry of a judgment confirming the arbitration award is authorized by local

rule. The appellants' claims are unsupported by the authority that they have cited.

While not argued by the appellants, the more appropriate approach would be to review those cases which deal with the court's discretion regarding continuance of a trial setting. While the appellants in this matter refer to "sanctions" that should have been considered by the trial court in this matter, the only real possibility was that the court would grant a new trial date or continue the existing trial date. As a general matter, granting or denying of a motion for a continuance rests with the sound discretion of the trial court. That decision will not be disturbed on appeal absent a showing that the trial court abused its discretion. This is a high burden for an appellant to meet. See, e.g., Bennett v. Bennett, 63 Wn.2d 404, 387 P.2d 517 (1963); Northern States Construction Company v. Banchemo, 63 Wn.2d 245, 368 P.2d 625 (1963).

If we analyze this case on the basis of whether the court could or should have continued the trial date, then the starting point is to note that the appellants in this matter did not file a motion to continue the trial date. The court was not obligated to grant a continuance when no motion was filed by the appellants. See generally CR 40(d) and CR 40(e). However, even if the appellants

had filed a timely motion to continue (or a motion to continue at any time), the court was well within its discretion in entering judgment in this matter. At the time that the motion for entry of judgment was filed, this case had been pending in the trial court for nearly four years. The matter had proceeded through arbitration a year and a half before the matter was scheduled for trial. Trial had been continued several times, primarily because of the unavailability of the appellants and particularly Alan DeAtley, one of the appellants. The appellants had requested trial de novo and had failed to confirm the matter for trial as required by the local rules. When considering the need for an expeditious conclusion of these matters as mandated by RCW 7.06 and the rules adopted under that statutes, Commissioner Stewart properly exercised his discretion to enter judgment.

IV. CONCLUSION

Commissioner Stewart was authorized to enter judgment on the arbitration award pursuant to the local rules adopted in Snohomish County Superior Court. Those rules were appropriate and enforceable. The court's decision must be affirmed on appeal.

Date: 8.25.10A



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CERTIFICATE OF SERVICE

I certify that on the 25 day of August, 2014, I caused a true and correct copy of this Respondent's to be served on the following in the manner indicated below:

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