

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

NO. 67859-1-I

Nicholas R Padvorac,

Appellant,

v.

SAN JUAN COUNTY,

Respondent.

BREIF OF RESPONDENT SAN JUAN COUNTY

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I. INTRODUCTION

This matter involves an action by San Juan County (“the County”) to enforce a final arbitration award that was issued through an arbitration proceeding conducted pursuant to a CR2A Settlement Agreement. The Final Award ordered Appellant Nicholas R. Padvorac (“Padvorac”) to sell 5.000 acres to the County and execute a road right of way easement in exchange for payment of \$270,000.00 some of which had already been paid by the County.

The San Juan County Superior Court confirmed the final arbitration award and granted summary judgment in favor of the County ordering Padvorac to sign the documents necessary to close the sale of property. This is an appeal of that Order.

II. ISSUES PERTAINING TO APPELLANT’S ASSIGNMENTS OF ERROR

1. Did the Superior Court properly confirm the arbitration award?
2. Did the Superior Court properly grant summary judgment in favor of the County when there was no genuine issue of material fact and the arbitration decision by Judge Lukens was final and binding on both parties?

III. STATEMENT OF THE CASE

This matter began on November 18, 2008 when the County filed a Petition for Condemnation against Padvorac for a road right of way and a wetland easement. CP 1-2. The parties engaged in a mediation held by the Honorable Terry Lukens and Judicial Arbitration Mediation Services in November 2009. CP 2. The mediation resulted in the execution of a CR2A Settlement Agreement. CP 2, 8-9. Under the terms of the Settlement Agreement, the County was to pay Padvorac the total price of \$270,000 in exchange for a 5.000 acre parcel in fee and a road right of way easement. CP 2, 8-9.

The Settlement Agreement provided that any issues arising from the implementation of the Agreement would be submitted to Judge Lukens for resolution by mediation and failing agreement by binding arbitration. CP 4.

Ultimately, Padvorac refused to carry out his responsibility to convey the right of way easement and sell the 5.000 acres to the County as required by the Settlement Agreement. CP 2. Padvorac took the position that \$78,960 previously paid to him by the County was not included in the \$270,000 settlement figure. CP 2-3.

Pursuant to the Settlement Agreement, the parties returned to Judge Lukens first for mediation and failing agreement, for binding

arbitration. CP 3. At the conclusion of the arbitration, Judge Lukens issued an award in favor of the County. CP 3. The final award was not appealed by either party. CP 3.

Padvorac did not comply with the final award and on March 14, 2011, the County filed a Verified Complaint for Specific Performance against Padvorac, requesting the court order Padvorac to comply with the terms of the final award. CP 1-25. The County subsequently filed a motion and memorandum in support of confirmation of the arbitration award and summary judgment. CP 30-45. The San Juan County Superior Court confirmed the arbitration award and granted the County's motion for summary judgment. This is an appeal of that Order.

IV. SUMMARY OF ARGUMENT

This is an appeal of a superior court order confirming an arbitration award and granting summary judgment in favor of the County. Issues regarding substantive matters that were addressed in arbitration are not before this Court.

The very narrow issues presented on appeal are whether the superior court properly confirmed the final award and whether the superior court properly granted summary judgment in favor of the County.

V. ARGUMENT

A. Standard of Review

The Court's review of an arbitrator's award is limited to that of the court which confirmed, vacated, modified, or corrected that award. Cummings v. Budget Tank Removal, 163 Wn. App. 379, 388, 260 P.3d 220 (2011). Review in this case is limited to the issues that were before the San Juan County Superior Court when confirming the final award and granting summary judgment in favor of the County. Consistent with Washington's strong policy favoring finality of arbitration awards, judicial review of such awards is limited to the face of the award. Kenneth W. Brooks Trust v. Pacific Media LLC, 111 Wn. App. 393, 396-397, 44 P.3d 938 (2002).

B. Padvorac's Unsupported Claims Should Be Disregarded.

Throughout his brief Padvorac attempts to shift the burden of proof to the County. This is an appeal of a superior court order; Padvorac as the appellant bears the burden of establishing error. Cummings, 163 Wn. App. at 388. Padvorac presents numerous issues in his brief that are not before the Court and asks the Court to look beyond the face of the award. To support these allegations Padvorac cites to facts that are not supported by the record such as the statement, "County principals recognized that Padvorac was deeply troubled by its request to take further property rights

from him.” Brief of Appellant, pg. 4. These unsupported facts and allegations distract from the actual issues before the Court and should be disregarded.

Similarly, Padvorac’s arguments (1) that it was error to issue the arbitration award, (2) that there was no meeting of the minds of the parties, (3) that the agreement is unenforceable, (4) that the terms of the agreement are unambiguous and (5) that the County has no need for ownership of the land are not supported by either citation to the record or legal authority. Brief of Appellant, pgs. 10-17.

Pursuant to RAP 10.3(a)(6), an appellant must provide argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. Arguments that are not supported by any reference to the record or by any citation of authority need not be considered. Foster v. Gilliam, 165 Wn. App. 33, 56, 26 P.3d 945 (2011). Padvorac’s unsupported claims should be disregarded.

C. The Court Properly Confirmed the Arbitration Award.

The County and Padvorac entered into a settlement agreement in November 2009 whereby Padvorac would convey a 5.000 acre parcel and

road right of way to the County in exchange for a payment of \$270,000.

CP 3. The Settlement Agreement stated, in relevant part:

The parties shall attempt, in good faith, to resolve any issues that arise in implementing this Agreement. Any issues that cannot be resolved will be submitted to Judge Terry Lukens for resolution, first by mediation and then, failing agreement, by arbitration. An Arbitration decision by Judge Lukens shall be final and binding on both parties.

CP 4. After execution of the Settlement Agreement, Padvorac refused to execute the documents needed to convey the property and right of way.

CP 4. Consequently, the parties proceeded to mediation and, ultimately, to arbitration before Judge Lukens. CP 4. On September 10, 2010, Judge Lukens issued a final award in favor of the County. CP 5. Padvorac did not move to vacate the award pursuant to RCW 7.04A.230, nor did he move to modify or correct the award pursuant to RCW 7.04A.240. CP 4.

On March 14, 2011, the County filed a complaint for specific performance in San Juan County Superior Court. CP 1. On July 22, 2011, the County moved to confirm the final arbitration award. CP 30-32.

1. The superior court was required to confirm the Final Award.

RCW 7.04A.220 states:

After a party to the arbitration proceeding receives notice of an award, the party may file a motion with the court for an order confirming the award, at which time the court shall issue such an order unless the award is modified or

corrected under RCW 7.04A.200 or 7.04A.240 or is vacated under RCW 7.04A.230.

(Emphasis added.) Padvorac did not file a motion to change the award within twenty days of receiving notice of the award as provided in RCW 7.04A.200. Padvorac did not file a motion to modify or correct the award within ninety days of receiving notice of the award as provided in RCW 7.04A.240 and Padvorac did not file a motion to vacate the award within ninety days of receiving notice of the award as provided in RCW 7.04A.230. Because the award was not modified, corrected or vacated, the superior court was required under RCW 7.04A.220 to confirm the award.

Padvorac is correct that the Superior Court had no option but to confirm or deny the award. Brief of Appellant, pg. 8. Padvorac is mistaken, however, in his assertion that an appeal pursuant to RCW 7.04A.280(c) of the order confirming the award allows the Court to review the merits of the award and vacate it if it is found to be in error. Brief of Appellant, pg. 10. An appeal of an order of confirmation does not provide Padvorac with a second opportunity to move for vacation of the award.

A motion to vacate an arbitration award must be filed within ninety days after the moving party receives notice of the award. RCW 7.04A.230; *see also* MBNA American Bank, N.A. v. Miles, 140 Wn. App. 511, 512, 164 P.3d 514 (2007). In MBNA, the appellant filed a motion to

vacate over one year after receiving notice of the award. Id. The court stated:

In Washington, arbitration is a ‘statutorily recognized special proceeding.’ And ‘the rights of the parties are controlled by statute.’ Therefore, any action contesting an arbitration award must be brought within the three-month period set forth in former RCW 7.04.180. The three-month period established by former RCW 7.04.180 is considered a statute of limitations. Its purpose ‘is to expedite finality of the arbitration process ... consistent with the overall objective of speedy resolution of disputes.’

Id. at 513-514 (internal citations omitted). Former RCW 7.04.180 was repealed and replaced with RCW 7.04A.230(2) in 2005. Both former RCW 7.04.180 and current RCW 7.04A.230 state that a motion to vacate an arbitration award should be filed within ninety days after receiving notice of the award for arbitration. Id. at 514.

Padvorac, like the appellant in MBNA, did not move to vacate the award within the three month period. Padvorac is now time barred from requesting the award be vacated. The only issues before the Court for review in this case are whether the superior court properly confirmed the final arbitration award and whether the superior court properly granted summary judgment.

A motion to confirm an arbitration award is no more than a motion for an order to enforce an award already made by the arbitrator pursuant to contract. Equity Group, Inc. v. Hidden, 88 Wn. App. 148, 154, 943 P.2d

1167 (1997). Padvorac has not met his burden of establishing that the superior court erred in confirming the final arbitration award.

2. Padvorac has not met his burden of establishing an error on the face of the arbitrator's award.

Even, if the Court could review the award and vacate it if it is found to be in error, the burden of showing that such grounds exist is on the party seeking to vacate the award. Cummings, 163 Wn. App. at 388.

Reviewing courts do not review an arbitrator's interpretation of contracts. Cummings, at 389-390. One of the statutory grounds for vacating an award is when the arbitrator has exceeded the arbitrator's powers. Id. at 388. This ground for vacation is available only if the alleged error appears on the face of the award. Id. at 389.

In Cummings, the appellant moved for vacation of the arbitration award arguing that the trial court had improperly limited its review to the last two pages of the award and failed to consider whether the first 40 pages of the award demonstrated recognizable error. Id. at 389. The court found that the statements made by the appellant did not show on their face that the arbitrator misunderstood the law of contracts or adopted an erroneous rule. Id. at 390.

In this case, as in Cummings, Padvorac is asking the Court to go beyond the face of the award and review the substantive merits of the

arbitrator's award. Absent an error of law on the face of the arbitrator's award, the reviewing court will not vacate or modify the award. Kenneth, 111 Wn. App. at 397. An arbitration award "shall not be vacated if the appellant's argument cannot be decided without 'delving into the substantive merits of the claims.'" ML Park Place Corp. v. Hedreen, 72 Wn. App. 727, 741, 862 P.2d 602 (1993) (citing W.A. Botting Plumbing & Heating Co. v. Constructors-Pamco 47 Wn. App. 681, 684, 736 P.2d 1100 (1987)). Padvorac's request that the Court examine the language of the Settlement Agreement would require the Court to delve into the substantive merits of the claims. Padvorac has not met his burden of establishing an error on the face of the arbitrator's award.

3. Judge Lukens had authority to arbitrate the dispute between the parties.

A court reviews questions of arbitrability de novo and determines the arbitrability of the dispute by examining the arbitration agreement between the parties. Davis v. General Dynamics Land Systems, 152 Wn. App. 715, 718, 217 P.3d 1191 (2009). If the court can "fairly say that the parties' arbitration agreement covers the dispute, the inquiry ends because Washington strongly favors arbitration." Id.

Padvorac alleges that Judge Lukens had no jurisdiction to change the substantive terms of the Settlement Agreement. Brief of Appellant,

pg. 13. The statutes governing private arbitration reflect a strong presumption of validity of agreements to submit to arbitration. *See*, Chapter 7.04A RCW. Although Padvorac quotes the arbitration agreement between the parties, Padvorac fails to demonstrate why he believes Judge Lukens lacked authority to arbitrate. Padvorac has not presented any authority, explanation, or citation to the record in support of this claim and it must be disregarded. RAP 10.3(a)(6); *See also*, Foster, 165 Wn. App. at 56.

D. The Superior Court Properly Granted the County's Motion for Summary Judgment and Denied Padvorac's Motion to Dismiss.

An appellate court reviews a trial court's grant of summary judgment de novo. Fitzpatrick v. Okanogan County, 169 Wn.2d 598, 605, 238 P.3d 1129 (2010). A court may grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. CR 56(c).

As discussed above, an agreement to arbitrate is enforceable and binding. Godfrey v. Hartford Cas. Ins. Co., 142 Wn. 2d 885, 894, 16 P.3d 617 (2001). Summary judgment in this case was proper because there were no genuine issues of material fact before the superior court.

1. There were no genuine issues of material fact before the superior court.

Padvorac asserts that the question of whether there was a meeting of the minds of the parties presented a material fact precluding summary judgment. Brief of Appellant, pg. 17. This claim is not properly supported by the record or by legal authority as required by RAP 10.3(a)(6) and was not before the superior court. Further, ultimate facts, conclusions of fact, conclusory statements of fact or legal conclusions are insufficient to raise a question of fact. Snohomish County v. Rugg, 115 Wn. App. 218, 224, 61 P.3d 1184 (2003).

2. Whether or not there was a meeting of the minds between the parties is not a material fact.

Finally, the question of whether there was a meeting of the minds regarding the amount to be paid for the 5.000 acre parcel, even if properly presented to the Court, is not a material fact. A material fact is one upon which the outcome of the litigation depends. Carlton v. Black (in re Estate of Black), 153 Wn.2d 152, 160, 102 P.3d 796 (2004).

Arbitrators when acting under the broad authority granted them by both the agreement of the parties and the statutes, become the judges of both the law and the facts, and, unless the award *on its face* shows their adoption of an erroneous rule, or mistake in applying the law, the award will not be vacated or modified.

Equity Group, Inc., 88 Wn. App. at 158. Padvorac is asking the Court to go beyond the face of the award. Absent an error on the face of the arbitration award the superior court was required to confirm the award and grant the County's motion for summary judgment. Kenneth, 111 Wn. App. at 397. The amount to be paid for the 5.000 acre parcel is beyond the face of the award and delves into the substantive issues decided by the arbitrator.

No genuine issues of material fact existed and the County was entitled to enforcement of the final arbitration award as a matter of law. Summary judgment was properly granted.

VI. CONCLUSION

This is an appeal of an order confirming a final arbitration award and granting summary judgment in favor of the County. The issues before the Court are very narrow. Because Padvorac did not move to modify, correct, or vacate the arbitration award within the timeframe prescribed by statute, the superior court properly confirmed the arbitration award and granted the County's motion for summary judgment.

The County respectfully requests the Court affirm the superior court's order confirming the arbitration award and entering summary judgment in favor of the County.

Respectfully submitted this 27 day of March 2012.

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