SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2945-20

SUSAN BIERIG-KIEJDAN,

Plaintiff-Respondent,

v.

RALPH KIEJDAN,

Defendant-Appellant.

Argued January 11, 2023 – Decided February 16, 2023

Before Judges Accurso, Firko, and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Atlantic County, Docket No. FM-01-0395-16.

Matheu D. Nunn argued the cause for appellant (Einhorn, Barbarito, Frost & Botwinick, PC, attorneys; Matheu D. Nunn, Bonnie C. Frost, and Jessie M. Mills, on the briefs).

James P. Yudes argued the cause for respondent (James P. Yudes, PC, attorneys; James P. Yudes, of counsel; Kevin M. Mazza and Melissa R. Barrella, on the brief).

PER CURIAM

Defendant Ralph Kiejdan appeals from a May 12, 2021 post-judgment Family Part order compelling the parties to return to arbitration to resolve the issue of securing plaintiff Susan Bierig-Kiejdan a Jewish divorce known as a "get" from a Bet Din.[1] We reverse, finding the parties did not agree to arbitrate post-judgment issues unless they entered into a new arbitration agreement following the entry of their final judgment of divorce (FJOD), which they did not agree to do.

I.

On November 2, 1992, the parties were married in an Orthodox Jewish ceremony, during which the parties entered into a marriage agreement known as a "ketubah." The ketubah was written in either Hebrew or Aramaic. On November 24, 2015, plaintiff filed a complaint for divorce. The parties agreed to arbitrate any issue arising of the marriage "that could be raised in the Superior Court . . . both pendente lite and final." The parties entered into a consent order/agreement for arbitration (arbitration agreement), which provided that "the arbitrator shall determine whether an issue or dispute is within the scope of

[1] A "Bet Din" or "Beth Din" is a Jewish rabbinical court that issues a get. Without a get, a wife cannot remarry under Jewish law. Minkin v. Minkin, 180 N.J. Super. 260, 261-62 (Ch. Div. 1981).

his jurisdiction." The arbitration agreement also provided that once the final award was confirmed by the Family Part judge, all post-judgment applications had to be made to the court unless the parties executed another arbitration agreement.

The seven-day arbitration proceedings took place in the Fall of 2018. On December 11, 2018, the arbitrator issued his decision, in which [he/she] explained plaintiff requested defendant be compelled to provide her with a get. Defendant promised to "voluntarily commence that process" through a Bet Din following the entry of the parties' FJOD. The arbitrator addressed Jewish divorce custom in his decision as follows:

> By way of background, when a Jewish couple marries, they sign a marriage contract called a ketubah. When a Jewish couple divorces, they need a Jewish divorce decree, known as a get, in order to dissolve the religious marriage contract, the ketubah. "Any man or woman who does not obtain a get cannot remarry, and any subsequent children born to an individual without a get are considered bastards who cannot partake in certain religious practices and rituals." Absent contractual language in the ketubah providing specific provisions and requirements for the granting of a get, a husband in the Jewish religion solely dictates whether the get will be granted.
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> [(citations omitted).]

The arbitrator noted that neither party provided a translated copy of the ketubah, and they disagreed as to the interpretation of any get provision. Defendant asserted plaintiff had to pay him to receive a get, but plaintiff testified the ketubah did not contain any provision relevant to a get. The arbitrator therefore found this issue to be "a monetary dispute as opposed to something involving [defendant's] religious beliefs."

Recognizing the lack of a translated ketubah, the arbitrator concluded the Bet Din should adjudicate the get issue. "Based upon [defendant's] assurances that" he would begin seeking a get after entry of the FJOD, the arbitrator refused to compel defendant to give plaintiff a get. However, plaintiff retained "the right to seek judicial intervention in the future if . . . unable to obtain a get through the Bet Din."

On January 21, 2020, the judge confirmed the arbitration award and amended the award two weeks later to adjust interest charged on the equitable distribution of assets. On February 26, 2020, the FJOD was granted and incorporated the arbitration award. The FJOD provided:

> Based on . . . defendant's assurance at trial before the arbitrator that . . . defendant will voluntarily commence the process of obtaining a Jewish get from the Jewish Rabbinical Council, the Bet Din, immediately following the entry of a FJOD so that the rabbinical court could resolve the parties' respective

> rights and obligations under the ketubah, the arbitrator denied . . . plaintiff's request that . . . defendant be compelled to provide her with a get without prejudice. Because the arbitrator denied . . . plaintiff's request without prejudice, . . . plaintiff reserves the right to seek post-judgment judicial intervention in the future if she is unable to obtain a get through the Bet Din.
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> [(emphasis added).]

In a May 21, 2020 email exchange, defendant told plaintiff "we are going to a Bet Din and I'll give you Rabbi [Mendel] Gold['s] number tomorrow." Plaintiff had already been in contact with Rabbi Yitzchok Meyer Leizerowski in Pennsylvania, and questioned why the parties had to "drive so far" to use defendant's preferred Rabbi. Plaintiff exchanged emails with Rabbi Gold in May and June of 2020 and refused to use his services, instead preferring to use the Beth Din of America. Plaintiff believed defendant retained Rabbi Gold to try "to extort money" from her, but Rabbi Gold certified he "did not know" either party prior to being contacted regarding the get.

On October 22, 2020, defendant filed a motion requesting the judge certify the matter as final so he could file an appeal from the FJOD. On November 5, 2020, plaintiff filed a notice of cross-motion opposing defendant's motion and seeking "to compel . . . defendant to fully cooperate with the process, including with the Beth Din, to enable . . . plaintiff to obtain a get forthwith, or

alternatively to order a hearing with respect thereto." Defendant's moving certification stated he had already "engaged a highly experienced and credentialed Bet Din, Rabbi . . . Gold in New York City." The judge conducted oral argument on the motions on November 20, 2020, and reserved decision.

On December 3, 2020, the judge ordered defendant "to commence the get proceedings within a [forty-five] day period from November 20, 2020 through the Bet Din he has selected." The next day, plaintiff sent a letter to the judge asserting that under the terms of the ketubah, defendant was not entitled to select any Rabbinical Court of his choosing. She attached a certified English translation of the parties' ketubah to the letter. Plaintiff's translation is printed on the letterhead of the Orthodox Beth Din of Philadelphia and signed by Rabbi Leizerowski. In relevant part, plaintiff's translation reads:

> And the [parties] agreed that if one of them were to contemplate or seek the termination of their marriage or if one of them were to terminate it in civil court, then either may summon the other to appear before the Beit Din (Court) of the Rabbinical Assembly and of the Jewish Theological Seminary of America or a designate or successor; and that both of them will abide by the decisions of this Beit Din in order that both may be able to live according to the rule of Torah.

On December 7, 2020, defendant's attorney wrote a letter to the court stating that plaintiff had "raised a number of issues which [defendant] cannot

address until [he has] someone who has engaged in the translation and further legal analysis particularly with the Bet Din whom [defendant] has engaged." Regarding plaintiff's newly-presented translation, the letter stated plaintiff had "sought to interject something which was never presented to the court previously and . . . would require both factual and legal input."

On December 11, 2020, defendant's attorney sent a follow-up letter to the judge pointing out that the translated ketubah was "never presented" at the arbitration or in any other trial court proceedings, and plaintiff's December 4, 2020 letter referenced "issues that were never brought before the court." Defendant's counsel noted he had "no idea" whether plaintiff's ketubah translation was accurate and argued the "designate or successor" language was unclear and could support choosing any Bet Din, even if plaintiff's translation was correct. Counsel stated defendant was "already working with a Bet Din and will continue to" comply with the court's order that was still in effect.

On December 16, 2020, plaintiff filed a notice of motion for reconsideration, seeking to amend the December 3, 2020 order to compel defendant to obtain the get "through a Bet Din of the Rabbinical Assembly . . . of the Jewish Theological Seminary of America or a designate or successor consistent with the parties' ketubah." Defendant filed a notice of cross-motion

opposing plaintiff's motion on January 7, 2021. In his cross-moving certification, defendant stated this is a "religious undertaking," which should be addressed by a qualified Bet Din, not a court. "It is certainly, in fairness, not within the auspices of a civil court."

On January 29, 2021, the judge amended the December 3, 2020 order to instruct defendant to commence the get proceedings within forty-five days of January 22, 2021, using "a Bet Din of the Rabbinical Assembly and of the Jewish Theological Seminary of America or a designate or successor" as prescribed in plaintiff's translation of the ketubah. On February 11, 2021, defendant filed a notice of motion to reconsider the January 29, 2021 order, and attached a certification with his own translation of the parties' ketubah. Defendant certified that neither party "knew whether or not [plaintiff's] translation was accurate," and he therefore retained his own expert whose notarized translation contains important differences from plaintiff's translation. Defendant's translation reads in relevant part:

> [The parties] agreed that should it occur to one of them to break off their marriage, or should their marriage be broken off by the state's courts, then either he or she shall be entitled to summon the other to the court of the Rabbinical Assembly and the rabbinical academy of the land that exists, or to one that comes from its authority, and that they shall both obey its judgment, so that they may both live according to the Torah's laws.

Plaintiff opposed the motion.

In a March 16, 2021 reply certification, defendant claimed although he did not have a translation as of January 29, 2021, he was not "playing games." Defendant requested the court "rescind its January 29, 2021 order" so he could proceed with Rabbi Gold, or else "simply rescind this order and take no action further because of the constitutional . . . issues relating to a civil court dealing with these very religious issues."

On May 3, 2021, defendant's attorney sent a letter to the court noting that the get continued "to present a conundrum." He also questioned whether the judge could order the parties to return to arbitration at that late stage of the proceedings. On May 12, 2021, the judge issued an order directing the parties to return to arbitration so the arbitrator could "continue [his] analysis of the relevant issues and provide a written opinion." In his supplemental memorandum of decision (MOD), the judge wrote:

> As noted in a previous MOD . . . , it is clear that the arbitrator did not order defendant to obtain a get based upon defendant's representation that he would do so. However, the court cannot enforce an obligation that was not ordered by the arbitrator despite defendant's statement. Therefore, that MOD confirmed that defendant was ordered to begin the process of obtaining a get.

Defendant did, in fact, begin the process of obtaining the get. However, a new problem arose. The parties differ in the translation of the Jewish marriage contract, the ketubah. Plaintiff claims it is written in Hebrew and defendant claims it is written in Aramaic, or a combination of Hebrew and Aramaic. Suffice it to say, regardless of the language in the ketubah, the parties disagree as to its translation and who or what entity is authorized by the ketubah to issue a get.

. . . .

However, the court's analysis does not end there. The court is presented with the issue of whether or not the court can compel the parties to go back to binding arbitration. The court has reviewed the arbitration agreement.

The court agrees that without such an agreement, this court may not compel arbitration. However, the court believes that the contractual language allows the court to do so.

. . . .

Clearly, the parties are outside the twenty-day period. However, the issue was clearly addressed by the arbitrator but simply not decided based on defendant's representation that he would go through with giving plaintiff a get. The court cannot simply find that it does not have the authority to decide an issue without providing a remedy. Therefore, this court finds that it is within its equitable powers to extend the twenty-day period to the date that the original applications were filed. If the court does not do this, it will cause an endless stalemate that could not be overcome by either party. Therefore, the parties are

> ordered to go back to the arbitrator and submit to binding arbitration . . . .

The judge did not question the finality of the arbitration agreement when ordering the parties to return to arbitration—without their mutual written consent—to address the get. Rather, the judge concluded he had the "equitable power" to extend the twenty-day deadline in the parties' arbitration agreement, which extinguished the jurisdiction of the arbitrator after the arbitrator rendered his decision.

On appeal, defendant contends the judge improperly compelled the parties to return to arbitration to resolve the question of a get and to interpret their ketubah. Defendant further argues the arbitrator's authority terminated upon confirmation of the arbitration award pursuant to the terms of the arbitration agreement and interpretation of the ketubah is a religious issue beyond the scope of the court and arbitrator's authority.

II.

"The general rule is that findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence," Gnall v. Gnall, 222 N.J. 414, 428 (2015), and "because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare v. Cesare, 154 N.J. 394, 413 (1998). We also "accord

great deference to discretionary decisions of Family Part judges." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012).

"As to issues of law, however, [appellate] review is de novo," and the "trial court's interpretation of the law and the legal consequences that flow from the established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"A judgment is final for purposes of appeal if it 'dispos[es] of all issues as to all parties.'" Wein v. Morris, 194 N.J. 364, 377 (2008) (quoting Hudson v. Hudson, 36 N.J. 549, 552-53 (1962)). After a court-appointed arbitrator completes the arbitration proceedings and issues an award, "the dispute [is] subject to final resolution by the court confirming, vacating, or modifying the award." Ibid.

An arbitration agreement is a contract. Waskevich v. Herold Law, P.A., 431 N.J. Super. 293, 298 (App. Div. 2013). Arbitration agreements are therefore "subject, in general, to the legal rules governing the construction of contracts." Cole v. Jersey City Med. Ctr., 215 N.J. 265, 276 (2013) (quoting McKeeby v. Arthur, 7 N.J. 174, 181 (1951)). Arbitration involves a contractual relationship between the parties: "it is a way to resolve those disputes—but only those

disputes—that the parties have agreed to submit to arbitration." First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 943, 945 (1995).

Here, at no time post-judgment did the parties provide written consent to return to arbitration and they did not enter into a new arbitration agreement to address the get. "Parties are not required 'to arbitrate when they have not agreed to do so.'" Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442 (2014) (quoting Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 478 (1989)); see also In re Arbitration Between Grover & Universal Underwriters Ins. Co., 80 N.J. 221, 228 (1979) ("'Only those issues may be arbitrated which the parties have agreed shall be.'").

Having reviewed the record, and considered the arguments of appellate counsel, we conclude the judge abused his discretion by invoking equitable powers to extend the twenty-day period in the parties' arbitration agreement and ordering them to arbitrate the get issue. Paragraph 41 of the parties' arbitration agreement explicitly states: "There shall be no further jurisdiction of the arbitrator to consider any further applications of either party, absent written consent of the parties to expand the scope of arbitration." That clearly did not occur here. Moreover, the parties did not agree to confer such discretion with

the judge. Since the parties did not mutually agree in writing to arbitrate the get issue post-judgment, reversal is warranted.

To the extent we have not specifically addressed any remaining arguments raised by defendant, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed.