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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4497-15T1

CHRISTINE ANTICO,

Plaintiff-Respondent/
Cross-Appellant,

v.

FRANK ANTICO,

Defendant-Appellant/
Cross-Respondent.

Submitted January 9, 2018 – Decided May 2, 2018

Before Judges Fasciale, Sumners and Moynihan.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Monmouth
County, Docket No. FM-13-0171-16.

LaRocca Hornik Rosen Greenberg & Patti, LLC,
attorneys for appellant/cross-respondent
(John A. Patti, on the briefs).

Sherwood & Johnson, LLC, attorneys for
respondent/cross-appellant (Erin K. Burke and
Diana Sherwood, on the brief).

PER CURIAM

In the midst of contentious divorce proceedings, plaintiff
and defendant entered into a consent order agreeing to participate

in binding arbitration. Three years later, the arbitrator rendered a final arbitration decision on July 2, 2015, addressing all the issues raised before him. Both parties then sought reconsideration, which resulted in an amended award on December 24, 2015. Thereafter, they each turned to the Law Division for relief, which led to companion orders of June 14, 2016, confirming the arbitration awards and denying plaintiff's request for counsel fees pendente lite, and denying defendant's application to vacate the arbitration decisions. A judgment of divorce was entered ten days later.

Defendant appeals, arguing:

POINT I

THE ARBITRATION RETAINER IS VOID AB INITIO AS IT [REFERS] TO TWO DISTINCT APPEAL AND REVIEW STATUTES.

POINT II

THE TRIAL COURT EXCEEDED ITS DISCRETION IN UNILATERALLY APPLYING THE [APDRA¹] AND NOT THE UAA.²

POINT III

THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT'S MOTION TO VACATE THE ARBITRATION ORDER WAS SUBJECT TO A THIRTY DAY TIME DELAY UNDER THE ALTERNATE PROCEDURE FOR DISPUTE

¹ The New Jersey Alternative Procedure for Dispute Resolution Act (APDRA), N.J.S.A. 2A:23A-1 to -19.

² Uniform Arbitration Act (UAA), N.J.S.A. 2A:23B-1 to -32.

RESOLUTION ACT, N.J.S.A. 2A:23A-13(d), AND WAS THEREFORE FILED UNTIMELY.

POINT IV

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO SET ASIDE THE ARBITRATION DECISION AS CONTRARY TO NEW JERSEY LAW.

POINT V

IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO CONCLUDE THAT THE ARBITRATOR FORGOT TO LIST THE EXHIBITS.

POINT VI

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO RECOGNIZE SUBSTANTIVE ERRORS IDENTIFIED BY DEFENDANT REGARDING CUSTODY AND CHILD SUPPORT.

POINT VII

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO ADDRESS AND RECOGNIZE THE MISCALCULATION OF ALIMONY BY THE ARBITRATOR AS AN ERROR AND FURTHER EVIDENCE TO VACATE THE AWARD.

POINT [VIII]

THE TRIAL COURT FAILED TO ADDRESS NOR RECOGNIZE THE EXISTENCE OF OVER [FORTY] VARIOUS MISTAKES THAT WERE MADE THROUGHOUT THE DECISION OF THE ARBITRATOR'S JULY 2, 2015 DECISION AND THE DECEMBER 24, 2015 DECISION.

POINT [IX]

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO RECOGNIZE THAT THE ARBITRATOR IMPERMISSIBLY ASSUMED A DUAL ROLE OF MEDIATOR DURING THE ARBITRATION.

POINT [X]

[THE TRIAL JUDGE] SHOULD BE RECUSED FROM PRESIDING OVER THIS MATTER IN ANY CAPACITY BECAUSE SHE BASED HER RULINGS, FINDINGS AND UNSUBSTANTIATED EVIDENCE. (NOT RAISED BELOW).

POINT [XI]

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO ADDRESS THE ARGUMENT OF BAD FAITH AND COUNSEL FEES IN THE MOTION TO VACATE.

Plaintiff cross-appeals, arguing:

THE TRIAL COURT'S DENIAL OF PLAINTIFF'S COUNSEL FEE APPLICATION BASED UPON THE RULE GOVERNING PENDENTE LITE APPLICATION FOR COUNSEL FEES WAS IN ERROR, WHERE THE ARBITRATOR HAD MADE FINDINGS OF FACT AS TO THE PARTIES FINANCIAL CIRCUMSTANCES.

Because we conclude that defendant waived his right to appeal and that he failed to set forth reasons to vacate the arbitrator's decision under the statutes governing the arbitration proceedings, we dismiss the appeal. In addition, we affirm the denial of plaintiff's counsel fees request because she failed to file a case information statement and the court properly considered it as a pendente lite application.

The parties' arbitration agreement cited to both the APDRA and the UAA. It included a "waiver of rights" provision that stated the parties could only appeal the arbitrator's decision in accordance with the respective statutes. For the purposes of our

decision, we need not detail the rulings set forth in the two arbitration awards. Suffice it to say, that the fifty-four-page final award of July 2, 2015, covered alimony, child support, college contribution, determination of tax exemptions, life insurance, medical expenses, and equitable distribution. After the arbitrator issued a twelve-page amended award on December 24, plaintiff filed an order to show cause to seek emergent relief on the basis that she had no money and that defendant failed to comply with the arbitration decision. In opposition, defendant argued that plaintiff did not follow proper procedures. The trial court denied plaintiff relief; finding that it lacked jurisdiction as neither party filed a motion to confirm or vacate the arbitration award.

Following the court's directive, plaintiff filed a motion to confirm the arbitration award and sought counsel fees. Defendant responded with, in effect, a cross-motion to vacate the arbitration award under the APDRA, N.J.S.A. 2A:23A-13. His application was filed forty-three days from when defendant's counsel's office allegedly received the amended award on December 31. After hearing argument, the court reserved its decision until entering orders on June 14, 2016, granting plaintiff's motion to confirm the arbitration award but denying plaintiff's request for counsel fees pendente lite, and denying defendant's motion to vacate the

arbitration award. In a statement of reasons issued with the orders, the court stated that defendant's motion was untimely under the thirty-day requirement of N.J.S.A. 2A:23A-13(a); finding unconvincing his contention at argument that he had a longer time period of one hundred and twenty days to vacate the award appeal afforded by N.J.S.A. 2A:23B-23(b), because in his briefs, defendant cited the thirty-day or forty-five-day limitation periods under N.J.S.A. 2A:23A-12(d) and -13(a), respectively. The court also rejected defendant's argument that he sought to reconsider the final award rather than modify it within forty-five days to seek relief under N.J.S.A. 2A:23A-13(a). Yet, even if defendant had forty days to seek vacation of the award, the court determined that he acted untimely. Defendant filed his motion to vacate the arbitration awards on February 12, 2016, fifty days after December 24, 2015, the date counsel admitted on the record that his office received the modified arbitration award.

Putting aside the timeliness issue, the court found that on its merits, defendant's motion did not provide a valid basis to vacate the arbitration awards. Defendant argued the arbitrator: 1) failed to provide a sufficient statement of conclusions of law; 2) failed to recognize the 2014 Alimony Reform Act's amendments to N.J.S.A. 2A:34-23; 3) failed to consider exhibits; 4) failed to consider the correct child support obligation standard and

evidence therein; 5) impermissibly acted as both an arbitrator and mediator in violation of Minkowitz v. Israeli, 433 N.J. Super. 111, 146 (App. Div. 2013); and 6) misapplied and miscalculated the counsel fees award. Citing to the arbitration agreement, notably the waiver of rights provision, and both N.J.S.A. 2A:23A-13 and N.J.S.A. 2A:23B-24, even though the arbitrator only referenced the former statute, the court determined defendant's arguments were without merit.³ On June 24, 2016, the trial court entered a final judgment of divorce.

After defendant appealed and plaintiff cross-appealed, the court amplified its decision related to the provision of the June 14 order denying plaintiff's request for counsel fees pendente lite. R. 2:5-1. The court noted that it denied the fees request because plaintiff failed to submit a Case Information Statement, as required by Rule 5:7-2(a). The court found that the motion to confirm the arbitration award and for fees was technically a pendente lite order, since a final judgment of divorce had not been entered. Furthermore, the court found that plaintiff did not provide an analysis of factors listed in Rule 5:3-5(c), as required

³ The trial court denied defendant's request for a stay pending appeal.

by Rule 4:42-9, and did not provide information for other factors needed to be addressed.

Boiling defendant's eleven-point merits brief down to its essential arguments, he contends the court: erred in finding his motion to vacate the arbitration awards was untimely; abused its discretion by applying the APDRA, not the UAA, which was permissible in the arbitration agreement; and erred in finding his child support claim was meritless. However, as a threshold issue, we conclude that defendant waived his right to appeal.

Here, the arbitration agreement specifies both the APDRA and the UAA. But the APDRA is invoked in the agreement's waiver of rights section:

The parties have represented to the Law Firm that they have with the advice of counsel, knowingly, freely and voluntarily waived their right to a full and complete hearing before the Superior Court and have agreed to be bound by all pendente lite and final decisions of the Arbitrator and further agree that same shall not be appealable, except in accordance with N.J.S.A. 2A:23A-2(b). The parties further represent that upon advice of counsel they have been made fully aware that they gave up their right of appeal by entering into binding arbitration, except in accordance with N.J.S.A. 2A:23A-2(b). Nothing herein shall prevent either party from seeking enforcement in the Superior Court of any Order entered previously which remains in full force and effect or any decision rendered by the Arbitrator.

APDRA is a voluntary procedure for alternative dispute resolution. "Parties who enter into an agreement under the APDRA waive their right to a jury trial" and to an appeal of the arbitrator's decision except as provided in N.J.S.A. 2A:23A-13.⁴ Weinstock v. Weinstock, 377 N.J. Super. 182, 188 (App. Div. 2005)

⁴ N.J.S.A. 2A:23A-13(c) states:

The award shall be vacated on the application of a party who either participated in the alternative resolution proceeding or was served with a notice of intention to have alternative resolution if the court finds that the rights of that party were prejudiced by:

(1) Corruption, fraud or misconduct in procuring the award;

(2) Partiality of an umpire appointed as a neutral;

(3) In making the award, the umpire's exceeding their power or so imperfectly executing that power that a final and definite award was not made;

(4) Failure to follow the procedures set forth in this act, unless the party applying to vacate the award continued with the proceeding with notice of the defect and without objection; or

(5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution.

(citing N.J.S.A. 2A:23A-2(b)).⁵ Under the statute, an arbitration award may be challenged by commencing a "summary application in the Superior Court for its vacation, modification or correction." N.J.S.A. 2A:23A-13(a). Once the trial court grants an order that confirms, modifies, or corrects an arbitration award, the court is to enter a judgment or decree in conformity with the award. N.J.S.A. 2A:23A-18(b). The statute then states: "There shall be no further appeal or review of the judgment or decree." Ibid. "Thus, the only appeal of an umpire's award contemplated by the APDRA 'is an expedited summary review to the Chancery Division of the New Jersey Superior Court.'" Weinstock, 377 N.J. Super. at 188 (quoting Mt. Hope Dev. Assocs. v. Mt. Hope Waterpower Project, L.P., 154 N.J. 141, 148 (1998)).

Further, a separate section of the parties' arbitration agreement, provides "[t]he parties agree that the award will be the final and binding resolution of the disputes described above.

⁵ N.J.S.A. 2A:23A-2(b), in pertinent part, states that:

Any . . . agreement described in subsection [(a)] . . . shall be construed as an implied consent by the parties to the jurisdiction of the Superior Court to enforce that provision or agreement pursuant to the provisions set forth in this act and to enter judgment thereon. The contract . . . shall constitute a waiver by the parties of the right to trial . . . to appeal or review, except as specifically provided for in this act.

Judgment may be entered on the award according to law. There shall be no appeal, except for reasons set forth in N.J.S.A. 2A:23A-13 [and] N.J.S.A. 2A:23B-24." See Weinstock, 377 N.J. Super. at 188 (citing N.J.S.A. 2A:23A-2(b)).

Despite the statutory bar, there are "'rare circumstances' grounded in public policy that might compel [a court] to grant limited appellate review." Mt. Hope, 154 N.J. at 152. The supervisory function of an appellate court permits the exercise of jurisdiction when the trial court has failed to limit its judicial review to the grounds set forth in N.J.S.A. 2A:23A-13. N.J. Citizens Underwriting Reciprocal Exch. v. Kieran Collins, D.C., LLC, 399 N.J. Super. 40, 48 (App. Div. 2008).

In this case, defendant argues that the arbitration agreement is void because the reference to both the APDRA and the UAA prevents a reviewing court from properly reviewing an appeal. He further contends that the trial court abused its discretion by applying only the APDRA, and not the UAA, thus violating the intent of the parties and public policy. Defendant, however, ignores the fact that his motion sought to vacate the arbitration award under the APDRA; he did not brief the UAA, merely raising it at argument before the court. Thus, we see no abuse of discretion in the court's application of the APDRA, which as noted, provides that the parties waive their right to appeal the arbitration decision.

Moreover, the parties' arbitration agreement confirmed that they agreed to waive their rights to appeal.

We discern no authority to exercise our supervisory powers over the court, as it did not depart from the APDRA in any manner. Contrary to defendant's argument, the court considered all his contentions and explained why it did not find any error in the arbitration awards. There are no reasons enlisted in N.J.S.A. 2A:23A-13 or N.J.S.A. 2A:23B-24, for which we should vacate the awards. In accordance with the parties' agreement and N.J.S.A. 2A:23A-18(b), the appeal must be dismissed.

Because we conclude that we do not have jurisdiction to entertain this appeal, we need not address defendants remaining arguments. However, we add that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Finally, as for plaintiff's cross-appeal, we affirm substantially for the reasons expressed by the court in its well-reasoned amplified decision.

In sum, we dismiss the appeal, and on the cross-appeal, we affirm.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION