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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1019**

Robert Derrick Ecker,
Appellant,

vs.

Albert Tischler, et al.,
Respondents

**Filed March 17, 2014
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CV-11-8885

David J. Van House, Van House Law Firm, P.A., Shoreview, Minnesota (for appellant)

David B. Gates, LeVander, Gillen & Miller, P.A., South St. Paul, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's denial of his motion to vacate an arbitration award, arguing that the arbitrator evidenced partiality by failing to take evidence before determining that appellant's claim was time barred. We affirm.

FACTS

In 2007, appellant Robert Derrick Ecker purchased respondents Albert and Katherine Tischler's home. The parties agreed to take disputes relating to disclosure of material facts to arbitration. The arbitration agreement included a 24-month limitation period for filing a claim; in cases of fraud, a court or arbitrator could extend the limitation period.

In 2011, Ecker's property experienced water intrusion in the transite heating system, and he discovered a sump pump and drainage pit had been created to drain water from the heating system. Ecker asserted that the Tischlers failed to disclose the drainage system and submitted a demand for arbitration with the National Center for Dispute Settlement (NCDS). The NCDS responded that it could proceed with Ecker's claim only by court order because his demand was made outside of the 24-month limitation period. After Ecker filed suit against the Tischlers, the district court ordered the NCDS to accept Ecker's claim to first determine whether the claim was time barred.

The arbitrator scheduled a hearing for June 21, 2012, which took place at Ecker's home based on Ecker's request to have the hearing at his home. The arbitrator informed the parties that the principal issue was whether Ecker's "claim was filed timely and is therefore arbitrable"; if deemed arbitrable, a second hearing would be scheduled. The parties were "allowed to make whatever case" they considered necessary to support their position. The arbitrator accepted the parties' affidavits and briefs and indicated that live witness testimony would be taken if needed. Following the hearing, the arbitrator requested additional information and the parties submitted supplemental affidavits and

briefs. The arbitrator also gave Ecker the option of treating the proceedings as a motion for summary judgment or as an evidentiary hearing. Ecker chose the former.

In August 2012, the arbitrator ruled that there was no basis to extend the limitation period because Ecker failed to present “an iota of evidence” that the Tischlers lied or omitted relevant information because there was no evidence that they knew that the transite heating ducts were functioning as a drainage system underneath the home. Ecker requested clarification/modification of the arbitration award, arguing that he was entitled to a “full evidentiary hearing.” The arbitrator denied Ecker’s request.

On February 4, 2013, the district court held a hearing on Ecker’s motion to vacate the arbitration award and the Tischlers’ motion to confirm the award. Ecker argued that the arbitrator’s findings and conclusions contradicted the evidence. Ecker asserted that because the award was contrary to the evidence, the arbitrator failed to consider material evidence and as a result he was prejudiced.

On April 10, 2013, the district court denied Ecker’s motion to vacate the arbitration award and granted the Tischlers’ motion to confirm the award. The district court rejected Ecker’s argument that he did not receive a fair hearing. The court concluded that, although Ecker argued that the arbitrator refused to consider material evidence, “drew mistaken conclusions of law based the factual record,” or otherwise prejudiced Ecker’s rights in the manner in which the hearing was conducted, Ecker

“simply disagree[d] with the outcome,” and that “alone is not a basis to vacate an arbitration award.”¹ This appeal followed.

DECISION

Arbitration is a proceeding favored in law. *Ehlert v. W. Nat’l Mut. Ins. Co.*, 296 Minn. 195, 199, 207 N.W.2d 334, 336 (1973). Thus, “[a] judicial appeal from an arbitration decision is subject to an extremely narrow standard of review.” *Hunter, Keith Indus., Inc. v. Piper Capital Mgmt. Inc.*, 575 N.W.2d 850, 854 (Minn. App. 1998). Courts must “exercise every reasonable presumption in favor of the award’s finality and validity.” *Id.* (quotation omitted).

Because arbitrators are the final judges of both law and fact, an arbitration award “will not be reviewed or set aside for mistake of either law or fact in the absence of fraud, mistake in applying his own theory, misconduct, or other disregard of duty.” *Id.* Accordingly, a court may vacate an arbitration award only upon proof of at least one of the grounds provided in Minn. Stat. § 572B.23(a) (2012). The party seeking to vacate an arbitration award has the burden of proving the invalidity of the award. *Nat’l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984).

Ecker argues that the arbitrator failed to conduct a fair hearing, which provides a basis for vacating the award under Minn. Stat. § 572B.23(a).² He asserts that failure to conduct a fair hearing shows that there was “evident partiality by [the] arbitrator

¹ The district court noted that Ecker misunderstood the case because he presumed that a fraud occurred and argued that the limitation period commenced when he discovered the fraud in 2011.

² We will address Ecker’s arguments as raised in his brief filed with this court as his attorney inexplicably failed to appear for scheduled oral argument.

appointed as a neutral[.]” *See* Minn. Stat. § 572B.23(a)(2)(A). He also asserts that the failure to conduct a fair hearing shows “misconduct by [the] arbitrator prejudicing [his] rights.” *See id.*(a)(2)(C).

Ecker argues that the arbitrator failed to conduct a fair hearing because “[n]o witness testimony or cross-examination occurred” and that this “falls within the scope of evident partiality or prejudicial [mis]conduct.” Under Minn. Stat. § 572B.15 (2012):

a) The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties . . . and to determine the admissibility, relevance, materiality, and weight of any evidence.

(b) The arbitrator may decide a request for summary disposition of a . . . particular issue by agreement of all interested parties

(c) The arbitrator shall set a time and place for a hearing

(d) If an arbitrator orders a hearing under subsection (c), the parties . . . are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

The arbitrator conducted a fair hearing. The parties presented briefs, affidavits, and exhibits; attended a hearing at Ecker’s home; participated in a post-hearing phone conference; and submitted post-hearing briefs and affidavits. And Ecker chose a summary-judgment proceeding despite having the option to proceed with a full evidentiary hearing.

At the hearing before the district court on February 4, 2013, Ecker admitted that he “would have not cross-examined the Tischlers.” And when the district court asked if the arbitrator refused to accept any evidence, Ecker admitted that the arbitrator “did not exclude evidence.” When the district court asked, “So you agreed to waive your right to offer live testimony at the phase of the arbitration that dealt with whether there’s a prima facie case of fraud, right?” Ecker replied, “Yes.” The district court stated, “So you made a strategic decision that the existing record was sufficient to make the point you wish to make.” And Ecker replied, “On a prima face case, and then we were hoping for a hearing on the merits of whether they indeed committed fraud.”

Ecker appears to contend that the record does not support the arbitrator’s award. But “[w]hether the record supports an arbitrator’s findings is not an issue for [appellate] review.” *Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 413 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000). The district court determined that Ecker’s motion to vacate the award “boil[ed] down to an argument the arbitrator drew mistaken conclusions of law based on the factual record before him.” The district court appropriately denied Ecker’s motion to vacate the arbitration award because arbitrators are the final judges of both law and fact. *See Hunter*, 575 N.W.2d at 854; *see also Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988) (stating that “a court will not even set aside an arbitration award because it thinks the arbitrators erred as to the law or facts, as long as the reasoning and judgment are consistent”).

Affirmed.