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STATE OF MICHIGAN

COURT OF APPEALS

PAUL ERNEST VARCHETTI,

Plaintiff-Appellant,

v

JULIE ANN VARCHETTI,

Defendant-Appellee.

UNPUBLISHED
January 07, 2026
1:20 PM

No. 373804
Macomb Circuit Court
LC No. 2019-003247-DM

Before: TREBILCOCK, P.J., and PATEL and WALLACE, JJ.

PER CURIAM.

In this postjudgment divorce dispute, plaintiff appeals by right the trial court's order interpreting the divorce settlement agreement as requiring plaintiff to pay up to $160,000 out-of-pocket for defendant's then-existing and expert fees and ordering plaintiff to pay $2,000 in postjudgment attorney's fees. We affirm.

A. BACKGROUND

Plaintiff commenced this divorce action in 2019. Following extensive mediation in which both parties were represented by counsel, the parties executed a confidential divorce settlement agreement in March 2021. Relevantly, the settlement agreement required plaintiff to pay defendant's "currently-outstanding obligations to her Florida attorneys and financial experts and to her Michigan attorney, in a *total amount up to a maximum of $160,000* in currently-existing obligations." (Emphasis added.) The settlement agreement authorized plaintiff to directly negotiate "when and how the Florida professional fee debts are paid," and obligated plaintiff to "indemnify and hold [defendant] harmless from all liability associated with [defendant's] currently outstanding obligations to her Florida attorneys and financial experts and to her Michigan attorney." However, the agreement specified that defendant was solely responsible for "[a]ll attorney and professional fee charges that [defendant] incurs after the date of this Agreement . . . ."

Plaintiff was awarded jewelry in the property settlement. The settlement agreement reflected that the jewelry was being held as collateral by defendant's Florida attorneys and/or experts. Plaintiff was authorized to "negotiate the payment of [defendant's] legal and expert fees and keep for himself whatever collateral is returned as a result." Some of the property awarded to

defendant required qualified domestic relations orders (QDROs) to effectuate the transfers. The settlement agreement stated, "Each party shall pay half of the costs necessary to prepare any [QDROs]."

The settlement agreement also contained an arbitration clause for "drafting and disputes" wherein the parties acknowledged their agreement to arbitrate disputed issues under MCL 600.5070 *et seq.*:

> A. **Issues for Arbitration**: The Arbitrator will arbitrate any language disputes regarding any subsequent settlement documents (including the final confidential settlement agreement, the judgment of divorce, and any necessary ancillary documents, security provisions, and collateral), and as described below, the Arbitrator also will arbitrate any disputed issues described in this Agreement as being subject to arbitration.
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> B. **Arbitration**: The parties acknowledge that pursuant to the terms of Agreement, they are about to enter into an agreement for arbitration pursuant to MCL § 600.5070 *et seq*. As such, by their signatures on this Agreement, they hereby acknowledge and agree to confer the Arbitrator with jurisdiction to decide the issues identified above, in lieu of a trial by the Court.[1]

Under the financial terms of the settlement, which included the obligations for payment of attorneys and experts discussed above, the agreement stated that the designated arbitrator would "arbitrate any language disputes if the parties cannot agree on any terms and provisions of any necessary subsequent documents[.]" Each party signed the settlement agreement attesting that they had executed it "freely and voluntarily, without duress, and as their own free act and deed."

Two weeks later, the trial court entered a judgment of divorce, which both parties signed. The judgment stated that all provisions of the settlement agreement were "adopted by the Court, incorporated into, and merged into this Judgment of Divorce." The judgment also stated that the trial court would "retain jurisdiction to interpret and enforce any and all provisions of this Judgment of Divorce, including those found in the Settlement Agreement merged herein."

A dispute later arose over plaintiff's obligation to pay up to $160,000 for defendant's debts owed to her attorneys and financial experts. Defendant moved to have plaintiff show cause for failing to comply with the QDRO and failing to pay defendant's financial expert. Defendant maintained that plaintiff failed to pay defendant's financial expert and, consequently, defendant had been sued for the outstanding balance.[2] Defendant sought $3,500 in attorney's fees as a

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[1] The arbitration clause named a mutually agreeable person to act as an arbitrator and included the disclosures stated in MCL 600.5072.

[2] Defendant included a copy of the complaint filed against her by the financial expert, which alleged that the amount due and owing was $82,275. The record reflects that defendant settled the claim with her financial expert and agreed to pay him $138,225, which included prejudgment

sanction for plaintiff's failure to comply.[3] The trial court ordered plaintiff to appear for a hearing and show cause why he should not be held in contempt.

The parties' dispute centered on whether plaintiff was obligated to pay up to $160,000 out-of-pocket to satisfy defendant's outstanding attorney and professional fees or whether he was entitled to credit for the amount of debt that he "retired" through negotiations. Plaintiff maintained that he fully satisfied defendant's attorney-fee debt of $143,378.60 and thus only $16,621.40 remained on his $160,000 obligation.[4] Plaintiff asserted that defendant's financial expert was holding jewelry awarded to plaintiff in the divorce, the jewelry was worth more than plaintiff's remaining $16,621.40 obligation, and plaintiff had sued the expert for conversion. In supplemental briefing, plaintiff contended that the issue whether he was in compliance with his obligations under the settlement agreement required construction of the agreement's language. He asserted that the parties had agreed to arbitrate disputes over the language in the agreement and thus any dispute over his compliance should be arbitrated.

Following a hearing, the trial court declined to hold plaintiff in contempt, denied arbitration, interpreted plaintiff's obligation as having to pay $160,000 out-of-pocket for defendant's then-existing attorney and expert fees, and awarded defendant $2,000 in attorney fees incurred in pursuing the postjudgment issue.[5] This appeal followed.

II. POSTJUDGMENT DISPUTES

Plaintiff argues that the trial court erred by refusing to honor the parties' agreement to arbitrate language disputes in the divorce settlement agreement and the judgment of divorce. We disagree.

We review a trial court's decision interpreting a divorce judgment de novo. *Hudson v Hudson*, 314 Mich App 28, 33; 885 NW2d 652 (2016). Similarly, "[a] divorce judgment entered by agreement of the parties represents a contract," the interpretation of which is a question of law reviewed de novo. *Rose v Rose*, 289 Mich App 45, 49; 795 NW2d 611 (2010). "In general, a trial court's legal determinations are reviewed de novo, any underlying factual findings are reviewed for clear error, and ultimate discretionary decisions are reviewed for an abuse of that discretion." *Hein v Hein*, 337 Mich App 109, 115; 972 NW2d 337 (2021).

A consent judgment is treated as a contract and we apply principles of contract interpretation. *Andrusz v Andrusz*, 320 Mich App 445, 453; 904 NW2d 636 (2017); *Neville v*

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interest, costs, and attorneys' fees. However, the judgment could be satisfied by paying $82,275 within 120 days of the signed settlement agreement.

[3] Defendant later asserted that she had incurred $2,306.20 in attorney's fees and costs as a result of plaintiff's failure to fulfill his obligation under the terms of the divorce settlement agreement.

[4] Plaintiff admitted that his out-of-pocket payments to defendant's attorneys totaled $41,559.85, but contended that he negotiated the debt down as permitted by the terms of the settlement agreement.

[5] The QDRO issue was resolved before the hearing.

Neville, 295 Mich App 460, 466; 812 NW2d 816 (2012). Similarly, "[a]rbitration is a matter of contract," and we apply principles of contract interpretation. *Altobelli v Hartmann*, 499 Mich 284, 295; 884 NW2d 537 (2016). "This Court's goal in interpreting a contract is always to ascertain and give effect to the intent of the parties as reflected in the plain language of the contract." *Patel v FisherBroyles, LLP*, 344 Mich App 264, 271-272; 1 NW3d 308 (2022). "The words of a contract are interpreted according to their plain and ordinary meaning, and this Court gives effect to every word, phrase, and clause while avoiding interpretations that would render any part of the document surplusage or nugatory." *Id.* at 272 (cleaned up). "Unambiguous contracts must simply be enforced as they are written, absent a handful of extremely unusual circumstances like fraud, duress, or illegality." *Andrusz*, 320 Mich App at 453.

Although the general policy of this state favors arbitration, a party cannot be compelled to arbitrate an issue that the party did not agree to submit to arbitration. *Altobelli*, 499 Mich at 295. When arbitration is under the Domestic Relations Arbitration Act (DRAA), MCL 600.5070 *et seq*., there must be a written agreement that sets out the subjects of the arbitration and the arbitrator's powers. MCL 600.5071; MCL 600.5072(1)(a) ("The court shall not order a party to participate in arbitration unless each party to the domestic relations matter acknowledges, in writing or on the record, that he or she has been informed in plain language . . . Arbitration is voluntary."); *Miller v Miller*, 474 Mich 27, 34-35; 707 NW2d 341 (2005) ("As long as the parties agree to some document that meets the minimal requirements of MCL 600.5071 and MCL 600.5072(1)(e), the agreement is sufficient."); *Cipriano v Cipriano*, 289 Mich App 361, 371; 808 NW2d 230 (2010) ("The DRAA requires that parties first sign an agreement for binding arbitration delineating the powers and duties of the arbitrator.").

In this case, the settlement agreement reflects that the parties agreed to arbitrate certain issues. However, the parties did not expressly agree to arbitrate the interpretation and enforcement of the judgment of divorce or the provisions of the settlement agreement. Instead, the judgment of divorce clearly and unambiguously states that the trial court would "retain jurisdiction to interpret and enforce any and all provisions of this Judgment of Divorce, including those found in the Settlement Agreement merged herein."

Conversely, the settlement agreement expressly reserved arbitration for "any language disputes regarding any subsequent settlement documents" that were necessary to finalize the divorce. Any language disputes that may have existed regarding the settlement documents were resolved by the parties' execution of the documents. Once the settlement documents were finalized, there were no language disputes to arbitrate. The parties also agreed to arbitrate "any disputed issues described in this Agreement as being subject to arbitration." But the settlement agreement does not state that plaintiff's obligation to pay defendant's then-existing attorney and professional fees was subject to arbitration. On the basis of this language, the trial court concluded that it could allow the parties to arbitrate the dispute, if they agreed, but it could not compel them to arbitrate. The trial court's interpretation was consistent with the plain, unambiguous language in the settlement agreement and the judgment of divorce. The court was permitted to make a postjudgment ruling interpreting and applying its own judgment.

III. ATTORNEY'S FEES

Plaintiff further contends that the trial court abused its discretion by ordering plaintiff to pay defense counsel's fees absent any evidence of misconduct. We affirm.

We review a trial court's decision to award attorney fees in a divorce action for an abuse of discretion, but review attendant factual findings for clear error. *Ewald v Ewald*, 292 Mich App 706, 724-725; 810 NW2d 396 (2011). "The trial court abuses its discretion when its decision results in an outcome that falls outside the range of reasonable and principled outcomes." *Id.* at 724-725.

Generally, attorney fees are not recoverable from a losing party as costs "in the absence of an exception set forth in a statute or court rule expressly authorizing such an award." *In re KMN*, 309 Mich App 274, 294; 870 NW2d 75 (2015). However, a party to a divorce action may ask the trial court to order the opposing party to pay the party's attorney fees by operation of MCR 3.206(D)(1).[6] *Woodington v Shokoohi*, 288 Mich App 352, 369-370; 792 NW2d 63 (2010). An award of attorney fees is authorized when "the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply . . . ." MCR 3.206(D)(2)(b). The party requesting the attorney fees has the burden of showing facts sufficient to justify the award. *Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007).

We conclude that the record evidence in this case supports the trial court's finding that defendant violated the terms of the divorce judgment by failing to pay the professional fees for defendant's financial expert and thus subjecting defendant to collections litigation. Defendant requested $2,656.20 in costs and attorney's fees incurred in seeking to enforce the terms of the divorce judgment, which was supported by itemized bills. The trial court concluded that defense counsel's fees were reasonable and awarded defendant $2,000 in attorney's fees for having to appear twice to enforce the terms of the judgment. The trial court's award was within the range of reasonable and principled outcomes.

Affirmed.

/s/ Christopher M. Trebilcock
/s/ Sima G. Patel
/s/ Randy J. Wallace

[6] "A party [to a domestic relations action] may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding." MCR 3.206(D)(1).