S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

WILLIAM D. JOHNSON,

Plaintiff/Counter-Defendant-
Appellant,

v

LILLIAN B. JOHNSON,

Defendant/Counter-Plaintiff-
Appellee.

FOR PUBLICATION
June 7, 2007

No. 261919
Wayne Circuit Court
LC No. 03-336703-DO

Before: Murray, P.J., and O'Connell and Fort Hood, JJ.

MURRAY, P.J. (*concurring in part, dissenting in part*).

I concur with the majority's decision to affirm the trial court's judgment as to the parties' date of separation, as the trial court's finding of fact were not clearly erroneous. However, I dissent from the majority's reversal of the trial court's entry of a default judgment of divorce against plaintiff because, regardless of whether the order sending the parties to arbitration was erroneous, a default was properly entered against plaintiff for failing to appear at the arbitration.

This case has a tortured history in the trial court. Three different judges handled different aspects of the case, and at least one of the parties had more than one attorney during the trial court proceedings. Additionally, this was a contentious divorce with different views on how the parties lived. However, after sifting through the record, it appears that the following facts and procedures are undisputed, and require affirming the default judgment.

After a short bench trial, where the trial court determined the date of separation and ordered that the parties share equally in any pension benefits, the parties agreed on September 3, 2004 to submit their property issues to binding arbitration on November 1, 2004. Their agreement was embodied in an October 15, 2004 order for binding arbitration, which provided that

> 'the parties agree to submit to binding arbitration in regards to the division of the balance of the marital property. Arbitration shall be conducted by, if at all possible, Garber and Mayers, PC. The parties shall each pay half of the fee required for the arbitration. The issue of alimony is preserved pending future

ruling of the court, as expressed in the previous order entered September 3, 2004.'[1]

Prior to the November 1, 2004 arbitration, the parties filed motions before the trial court regarding the compelling of asset disclosures (defendant's motion) and a motion for reconsideration of the order regarding arbitration (plaintiff's motion). Specifically, on October 15, 2004, the court entered an order granting the defendant's motion to compel asset disclosure, which required both parties to complete asset disclosure forms and required the form to be completed and submitted to the opposing party and the arbitrator by October 22, 2004. The court also ordered that "binding arbitration shall take place on November 1, 2004 at 9 a.m. at the office of Garber and Mayers."

Thereafter, on October 24, 2004, the parties appeared before the trial court to address certain matters. The first issue addressed was whether the trial court had previously ruled that spousal support would be barred. After the trial court concluded that spousal support was at issue, the trial court considered plaintiff's motion for reconsideration and/or for a new trial. The basis of that motion was plaintiff's contention that the trial court had erred in making any determination regarding property during the trial (as noted, the trial court concluded that any pensions would be split equally) without making findings of fact or evaluating the proper factors for property division.

At oral argument on the motion, plaintiff's counsel objected to going forward with the arbitration because plaintiff felt that the arbitration was going to cover property that was not specifically discussed at the trial. Specifically, plaintiff's counsel asserted that because the trial court had mentioned certain properties when the parties placed their arbitration agreement on the record, the arbitration should be limited only to those specific properties. Since it appeared to plaintiff that the arbitration was going to involve all property between the parties, plaintiff asserted that he should not have to proceed with the arbitration. The court rejected this proposition in clear and unequivocal terms:

> The transcript is clear. That's your transcript. You didn't put any objections on it then, I'm not granting your motion for reconsideration. *I am adopting and enforcing the court order ordering you to go to arbitration on November 1. If you choose not to go to arbitration on November 1, you do so at your own peril.*
>
> This court has the authority and will maintain its authority to have judgments entered in all manners (sic) before it. I am scheduling a review hearing to ensure that the arbitration proceeded and that I have an arbitration and judgment in conformity therewith for December – Monday, December 6."

---

[1] Curiously, a second order, denoted "7-Day Order following trial" was also entered on October 15, 2004. That order, which was also submitted by defense counsel, stated that "the parties' consent to proceed to binding arbitration under division of the balance of the marital property, the court will withhold further ruling on property division."

Consequently, it was abundantly clear to plaintiff – or at least it should have been – that there had been two orders entered confirming that the arbitration was to take place on November 1st, and the trial court confirmed it again on the record on October 29, 2004, when denying plaintiff's motion for reconsideration and/or new trial.

The majority concludes that the default judgment should be reversed because the agreement to arbitrate was not in sufficient compliance with the Domestic Relations Arbitration Act, MCL 600.5070 et. seq. Although there is certainly a legitimate question regarding whether there was compliance with that Act, the default judgment should nevertheless be upheld because parties are not entitled to ignore, or not comply with, an order entered by a trial court simply because they believe it is an incorrect order. We said as much in *In re Drudzinski*, 257 Mich App 96, 110; 667 NW2d 68 (2003), where we held, quoting *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998), that "a party must obey an order entered by a court with proper jurisdiction, even if the order clearly is incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." As we held in *In re Drudzinski*, a party is not entitled to ignore or disobey a court order simply on the belief that the order was invalid and will be overturned on appeal:

> Civil disobedience is not the appropriate course of action when a person disagrees with a court order. We are a society of laws and the legal remedy available to appellant was to seek leave to appeal the trial court's order precluding him from wearing his shirt. Appellant elected not to pursue his legal remedy, and instead elected to willfully disobey a valid albeit erroneous court order. A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or that the order will be declared invalid on appeal. Allowing such behavior would encourage noncompliance with valid court orders on the basis of misguided subjective views that the orders are wrong. There exists no place in our justice system for self-help. *In re Drudzinski*, *supra* at 111.

In this case, that is exactly what plaintiff did. Plaintiff was repeatedly ordered to attend the November 1, 2004, arbitration, but refused to go forward with the arbitration on the basis that it was going to address property issues that were not, in his belief, supposed to be covered under the arbitration order. But because plaintiff cannot subjectively determine whether or not to comply with an order, and especially because the trial court had ruled just days before that plaintiff's arguments in this regard were without merit, plaintiff acted "at his own peril" in refusing to comply with the orders and refusing to engage in the arbitration proceedings. Since plaintiff willfully failed to comply with the trial court's order compelling arbitration, a default was properly entered against plaintiff. *Citizens Ins Co v Juno Lighting Inc*, 247 Mich App 236, 241; 635 NW2d 379 (2001). If plaintiff would have attended the arbitration, and then appealed to this Court any judgment entered on the arbitration decision and the prior order compelling arbitration, then in my view this case would be as the majority views it. However, as noted,

plaintiff did not follow the correct procedures and willfully disobeyed the orders compelling arbitration, and has now suffered the consequence of a properly entered default.[2]

/s/ Christopher M. Murray

---

[2] The concurrence's views in this case are perplexing. On the one hand, the concurrence exalts the attributes of the DRAA, but then indicates his fear of submitting domestic relations matters to the discretion of an "unknown, unelected, unappointed, and largely unaccountable third party." Yet it is this same DRAA that gives these "unaccountable third parties" (1) a great deal of discretion to decide domestic relations issues, (2) sets forth specific criteria for an attorney to be eligible to be an arbitrator, MCL 600.5072(2), (3) grants significant power to conduct quasi-judicial proceedings, MCL 600.5074, (4) all of which occurs with only limited review by the courts. MCL 600.5081. Additionally, the concurrence indicates agreement with my view that a party who disregards a court order acts at his own peril, but then remarks that statutes are also entitled to obedience. A true enough point, but a largely irrelevant one unless our judicial system now gives the party to a case the discretion to decide whether the order or statute was correct and therefore to be followed. But, of course, it does not. Rather, it is the judiciary that decides what the statute says, *Marbury v Madison,* 1 Cranch 137, 177 (1803), and how it applies to the case before it. Sometimes, as in this case, parties are faced with having to comply with an order they disagree with, but the answer is to follow the proper procedures outlined in the law for seeking relief through the courts, not to disregard the trial court's order. *In re Drudzinski, supra*. The concurrence's view, which seems to draw exceptions to this fundamental rule depending on what is at stake in the case, would only encourage "gamesmanship" and would not preserve our system of justice. *Ward v Siano,* 272 Mich App 715, 721 n 2; 730 NW2d 1 (2006) (O'Connell, J., concurring). See, also, *US v Armstrong,* 781 F2d 700, 707 n 4 (CA9, 1986). ("If everyone was free to disobey lawful court orders until the orders were ratified by some other tribunal, the result would be anarchy and disorder.")