

NO. A05-0446

STATE OF MINNESOTA
IN COURT OF APPEALS

All Metro Supply, Inc.,

Respondent,

vs.

Keith Werner,

Defendant,

vs.

Green Gardens Nursery and Landscape, Inc.,

Appellant.

APPELLANT'S BRIEF AND ADDENDUM

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TABLE OF CONTENTS

STATEMENT OF THE LEGAL ISSUES..... 1

STATEMENT OF THE CASE AND FACTS..... 3

SUMMARY OF THE ARGUMENT..... 6

ARGUMENT 7

 I. Standard of Review 7

 II. The Court Erred by Failing to Confirm the Arbitration Award..... 7

 III. The District Court Erred by Remanding a Case to an Arbitrator
 When no Party Sought Modification or Clarification of the Award
 Within the Mandatory 20 Day Time Period Contained in Minn. Stat.
 § 572.16, Subd. 3 10

 IV. The District Court Erred by Confirming the Amended Arbitration
 Award..... 11

CONCLUSION 11

ADDENDUM..... 13

CERTIFICATE OF COMPLIANCE 15

TABLE OF AUTHORITIES

STATE CASES

Boston Insurance Co. v. A. H. Jacobson Co.,
226 Minn. 479, 33 N.W.2d 602 (1948)..... 9

County of Lake v. Courtney,
451 N.W.2d 338 (Minn. Ct. App. 1990)..... 7

Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School Dist.
No. 182, Crosby-Ironton,
285 N.W.2d 667 (Minn. 1979)..... 1, 8, 9, 10, 11

Hibbing Educ. Ass'n v. Public Employment Relations Bd.,
369 N.W.2d 527 (Minn. 1985)..... 7

Unique Sys. Dev. v. Star Agency,
500 N.W.2d 144 (Minn. Ct. App. 1993)..... 7

STATE STATUTES ¹

Minn. Stat. Ch. 572 3, 5, 6, 12

Minn. Stat. § 572.16 1, 2, 4, 8, 9, 10, 11

Minn. Stat. § 572.18 1, 3, 5, 7, 11

Minn. Stat. § 572.19 5, 8, 11

Minn. Stat. § 572.20 5, 8, 10

¹ Pursuant to Minn. R. App. P. 128.04, Minn. Stat. §§ 572.16, .18, .19, and .20 are included in the Addendum to this Brief.

STATEMENT OF THE LEGAL ISSUES

1. Whether the court erred by failing to confirm an arbitrator's award when it had no basis to either modify or correct the award.

Decision Below: Without finding that the arbitration award contained any evident mistakes, the trial court issued an order reserving the Plaintiff's motion to confirm the arbitration award and remanded the case to the arbitrator. The trial court failed to confirm, modify or vacate the arbitration award and ultimately confirmed a different award altogether.

Most Relevant Authority: Minn. Stat. § 572.18

2. Whether the court erred by remanding a case to an arbitrator when no party sought modification or clarification of the award from the arbitrator within the mandatory 20 day time period contained in Minn. Stat. § 572.16, Subd. 3.

Decision Below: Although neither party made a formal application to the arbitrator pursuant to Minn. Stat. § 572.16, the trial court remanded the case to the arbitrator and instructed the arbitrator to open the record as the he saw fit, take additional testimony if necessary and provide a more definitive definition of "vehicles."

Most Relevant Authority: Minn. Stat. § 572.16; Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School Dist. No. 182, Crosby-Ironton, 285 N.W.2d 667 (Minn. 1979).

3. Whether the court erred by confirming a substantively different amended arbitration award, even though no party sought modification of the initial arbitration award within the mandatory 20 day time period contained in Minn. Stat. § 572.16, Subd. 3.

Decision Below: Without formal application by either party pursuant to Minn. Stat. § 572.16, the trial court remanded the case to the arbitrator and ultimately confirmed the arbitrator's amended arbitration award which was substantively different from the initial arbitration award.

Most Relevant Authority: Minn. Stat. § 572.16

STATEMENT OF THE CASE AND FACTS

This is an appeal from two Carver County district court orders issued on applications to confirm arbitration awards under Minn. Stat. § 572.18. The first order, dated August 18, 2004, was issued by the Honorable Philip T. Kanning. (App.0040-0041)² The second order, filed January 10, 2005, was issued by the Honorable Kevin W. Eide. (App.0065-0067) Plaintiff All Metro Supply, Inc. ("All Metro") filed this action in Carver County district court on April 29, 2004. All Metro asserted claims against Green Gardens Nursery and Landscape, Inc. ("Green Gardens") and Keith Werner ("Werner"). The claims arose out of a non-binding letter of intent for the sale of the All Metro business that never progressed into a binding sales agreement. The parties agreed to submit their dispute to binding arbitration under Minn. Stat. Ch. 572 and selected an arbitrator (the "Arbitrator"). (App.0001-0008) After discovery and a hearing, the Arbitrator issued an arbitration award on June 23, 2004 (the "Arbitration Award"). (App.0009-0010)

The Arbitration Award provided All Metro with the ability to recover \$100,000 from Green Gardens, but only if All Metro transferred title of certain assets to Green Gardens. (Arbitration Award, ¶ 1, App.0009-0010) In essence the Arbitration Award required All Metro to meet certain obligations in order to close a quasi-sale of certain assets if it wanted payment from Green Gardens. (*Id.*) The assets included within this transaction were listed by the Arbitrator as follows:

² As used herein, "App. ____" refers to Appellant's Appendix.

Payment of the above sum is conditioned upon All Metro delivering to Green Gardens a Bill of Sale for the inventory, equipment, office furnishings, trade fixtures, and good will, and Lien Releases from all lien holders. ... All Metro shall retain ownership of all vehicles identified in Claimant's Exhibit 12.

(Arbitration Award, ¶¶ 1-2, App.0009-0010) No party filed a request with the Arbitrator to modify or correct the award in accordance with Minn. Stat. § 572.16, Subd. 1.

Green Gardens prepared to close as required by the Arbitration Award. (App.0029-0030) Instead of closing on the terms in the Arbitration Award, All Metro claimed that the Arbitration Award contained an error. (App.0031) The Arbitration Award provided that All Metro was to keep the "vehicles" listed on Claimant's Exhibit 12. (Arbitration Award, ¶ 2, App.0010) Claimant's Exhibit 12 (App.0037) is a list of "Major Assets" and contains some items classified as vehicles and some items classified as equipment. Vehicles and equipment were separately listed within Claimant's Exhibit 13. (App.0022-0024) The "vehicles" identified on Claimant's Exhibit 12, as confirmed by Claimant's Exhibit 13, were three dump trucks. (See App.0020-0024, App.0037) The remaining items on Claimant's Exhibit 12, as confirmed by Claimant's Exhibit 13, were classified as "equipment" by All Metro. (Id.)

Based on what All Metro deemed to be an "unfortunate reference" to the term "vehicles," (App.0031) All Metro asked the Arbitrator to clarify that the term "vehicles" actually meant "vehicles and equipment." (App.0033-0037) This request came beyond the statutory 20 day time period for modification or correction of the award contained in Minn. Stat. § 572.16. The Arbitrator responded that he had "no authority to modify the

award," and admitted that he had not focused on the distinction between "vehicles" and "equipment." (App.0038)

All Metro then filed a motion with the district court under Minn. Stat. § 572.18 to confirm the Arbitration Award. All Metro further requested that the Court correct the award for evident mistake pursuant to Minn. Stat. § 572.20, Subd. 1(1).³ (App.0011-0012) Green Gardens responded by arguing that it was appropriate to confirm the award, but that there was no demonstration of "evident mistake," and that what All Metro wanted was a substantive change in the Arbitration Award that was impermissible under Minn. Stat. Ch. 572. (App. 0014-0024)

The district court issued an order dated August 18, 2004, in which it failed to confirm, modify, or vacate the Arbitration Award ("August 18 Order"). (App.0040-0041) Moreover, the district court made no findings that the Arbitration Award contained evident mistakes. Instead, the district court reserved the motion, remanded the case to the Arbitrator and directed the Arbitrator to "provide the parties with a more definitive definition of 'vehicles' so that the parties can specifically identify what pieces of equipment and/or automobiles are included within the definition of vehicles." (August 18 Order, ¶ 3, App.0041).

The Arbitrator reconvened the hearing, and Green Gardens participated under protest. On November 4, 2004, the Arbitrator issued an Amended Arbitration Award that

³ All Metro's Motion inadvertently cited Minn. Stat. § 572.19 instead of § 572.20. The relief requested was for "modification" of the award based on evident mistake, which is available under § 572.20.

was meant to replace the initial Arbitration Award ("Amended Arbitration Award"). (App.0046-0052) The Amended Arbitration Award added a category of damages, eliminated all requirements that All Metro provide Green Gardens with a bill of sale and lien waivers for property transferred, and provided that All Metro would keep control of all assets on Claimant's Exhibit 12. (Amended Arbitration Award, ¶¶ 1-6, App.0046-0048) This materially changed the substance of the Arbitration Award in several respects.⁴

All Metro filed its motion seeking to confirm the Amended Arbitration Award on November 30, 2004. (App.0043-0052) Green Gardens responded by arguing that: 1) the motion to confirm the initial Arbitration Award was still pending and should be granted, 2) the Arbitrator's action was beyond that authorized by statute, and 3) the Arbitrator's action was beyond that directed by the district court in the August 18 Order. (App.0053-0055) The district court granted All Metro's motion and confirmed the Amended Arbitration Award (the "January 10 Order"). (App.0065-0067) The court's January 10 Order did not address the still pending motion to confirm the initial Arbitration Award. Nor did the January 10 Order make any findings that would have justified the modification or vacation of the initial Arbitration Award. This appeal followed.

SUMMARY OF THE ARGUMENT

Minn. Stat. Ch. 572 provides very specific procedures and standards for district court action following an arbitration decision. The district court failed to follow these

⁴ The Award was further amended by the Arbitrator on November 24, 2004. (App.0044-0045)

statutory requirements. Absent a justified finding of "evident mistake," the initial Arbitration Award should have been confirmed as it was issued by the Arbitrator. No such finding was made, and no such finding could have been made. In addition, the district court's decision to remand the case back to the Arbitrator when no party had applied for modification of the award within the mandatory 20 day time period would render meaningless the statutory requirement to make a timely request for such modification. Finally, the district court's decision to confirm an Amended Arbitration Award that was substantively different from the initial Arbitration Award has denied Green Gardens that which Minnesota law guarantees to those who voluntarily agree to utilize alternative dispute resolution.

ARGUMENT

I. Standard of Review

On appeal, this Court makes an independent determination of legal issues without deference to the trial court's conclusions. E.g., County of Lake v. Courtney, 451 N.W.2d 338, 340 (Minn. Ct. App. 1990), pet. for rev. denied (Minn. Apr. 13, 1990). "The construction and application of a statute is a legal question" and thus is "fully reviewable" on appeal. Unique Sys. Dev. v. Star Agency, 500 N.W.2d 144, 146 (Minn. Ct. App. 1993); see also Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W.2d 527, 529 (Minn. 1985).

II. The Court Erred by Failing to Confirm the Arbitration Award

Minn. Stat. § 572.18 provides that a court shall confirm an arbitration award upon application unless it proceeds to vacate, modify or correct an award under the procedures

set forth in Minn. Stat. § 572.19 (for vacating an award) or Minn. Stat. § 572.20 (for modifying or correcting an award). In its motion, All Metro asked the district court to modify or correct the award for "evident mistake" under Minn. Stat. § 572.20. Upon such a request, the district court was obligated as follows:

If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

Minn. Stat. § 572.20, Subd. 2.

It is undisputed that the district court failed to find evident mistake, and failed to either correct or modify the Arbitration Award. The court's August 18 Order "reserved" the motion, and the January 10 Order confirmed a different award altogether. The statute is clear – upon failing to modify the award for a reason given in the statute, the district court was obligated to "confirm the award as made." Minn. Stat. § 572.20, Subd. 2. Its failure to do so is error, and should be reversed.

The court was correct not to modify the award for "evident mistake" as requested by All Metro. There is nothing in the Arbitration Award that would suggest that the term "vehicles" does not really mean "vehicles." Instead, All Metro sought a substantive modification of the Arbitration Award. However, Minn. Stat. § 572.16 allows for a substantive change in an award only upon application made within 20 days of its issuance. Minn. Stat. § 572.16, Subd. 3. This Court has held that the requirement to seek a substantive change from the arbitrator in a timely manner is mandatory, and must be enforced. See Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School Dist. No. 182, Crosby-Ironton, 285 N.W.2d 667 (Minn. 1979).

In Crosby-Ironton, the arbitrator issued an award on February 6, 1978 which gave the Crosby-Ironton teachers salary increases of \$550 for the 1977-78 school year and \$600 for the 1978-79 school year. 285 N.W.2d at 668. Several days after the award was issued, the arbitrator discovered a "typographical error" in the award and attempted to correct it by letter to the parties dated February 9, 1978 stating that the 1978-79 salary increase should be \$650 instead of the \$600 increase contained in the award. Id.⁵ Although neither party had made any formal application to modify or correct the award, the Crosby-Ironton Federal of Teachers ("Federation") attempted to enforce the award as corrected by the arbitrator. Id. at 668-69. The district court issued an order dated June 28, 1978 rejecting the Federation's attempt to enforce the corrected award. Id. at 669. The Federation then filed a motion to resubmit the matter to the arbitrator on July 14, 1978 – well past the 20 day time period contained in Minn. Stat. § 572.16, Subd. 3. Id. The district court denied the Federation's motion as untimely and the Federation appealed. Id.

On review, this Court held that "[i]t is well settled that statutory arbitration must comply with the requirements of the governing statute." Crosby-Ironton, 285 N.W.2d at 669 (citing Boston Insurance Co. v. A. H. Jacobson Co., 226 Minn. 479, 482, 33 N.W.2d 602, 604 (1948)) (emphasis added). This Court further held:

The correction sought in this case, from a \$600 salary increase to \$650, does affect the merits of the controversy and is not just a matter of form. Therefore, the trial court clearly

⁵ The arbitrator later admitted that the error was actually made when he dictated the award.

could not have ordered the arbitrator to modify the award under Minn. Stat. § 572.20, subd. 1(3) and 572.16 (1978). The only arguable grounds for resubmission here were that the award contained an evident miscalculation or mistake in description or was in need of clarification. Minn. Stat. ss 572.16, 572.20, subd. 1(1) (1978). We need not decide whether any of these grounds for resubmission existed under the facts of this case because, regardless of the grounds, the application for resubmission must be timely made. Here it was not.

In this case [] the Federation could have filed a formal application with the [arbitrator] within 20 days of [the issuance of the arbitration award], but it did not. It chose the procedure to follow, not the trial court, and took the risks involved.

Crosby-Ironton, 285 N.W.2d at 669 (emphasis added).

Minnesota law provided All Metro with one chance to seek a substantive modification of the Arbitration Award. All Metro waived this opportunity, thereby accepting the terms of the Arbitration Award as written. The Court should reverse the district court and order that the initial Arbitration Award should have been confirmed as made.

III. The District Court Erred by Remanding a Case to an Arbitrator When no Party Sought Modification or Clarification of the Award Within the Mandatory 20 Day Time Period Contained in Minn. Stat. § 572.16, Subd. 3.

The district court "reserved" the motion to confirm the Arbitration Award and remanded the matter back to the Arbitrator to reopen the record and report back to the court. (App.0040-0041) Minnesota law does not give the district court the authority to take such action. Minn. Stat. § 572.16, Subd. 1, allows a party to request that an

arbitrator change his mind or modify his order. Minn. Stat. § 572.16, Subd. 2, allows the court to request that an arbitrator clarify the award, but only if the application is made within 20 days of the issuance of the award. Minn. Stat. § 572.16, Subd. 3.⁶

The district court's decision to remand the case back to the Arbitrator under these circumstances violates the plain language of the statute and constitutes reversible error.

IV. The District Court Erred by Confirming the Amended Arbitration Award

The court erred for two fundamental reasons when it confirmed the Amended Arbitration Award. First, the district court allowed an arbitrator to make substantive changes to an arbitration award when no request for modification was made within the mandatory 20 day period. This is barred by Minn. Stat. § 572.16. See Crosby-Ironton, 285 N.W.2d at 668-70. Second, the district court erred by confirming the Amended Arbitration Award when the initial Arbitration Award had not been vacated. Minn. Stat §§ 572.18 and .19 establish standards that must be met for an award to be vacated. Those standards were not met in this case, and the court never vacated that initial award. Something had to happen to that award. By allowing the initial Arbitration Award to simply be superseded by the Amended Arbitration Award, the district court failed to follow the statutory process mandated by the Minnesota Legislature.

CONCLUSION

All Metro agreed to arbitrate this case and abide by the result. Green Gardens made a good faith attempt to comply with the Arbitration Award, and the district court

⁶ Moreover, the district court failed to make any finding that the award was in any way unclear.

responded by failing to apply clear Minnesota law. All Metro's only complaint is that it chose not to seek modification of the Arbitration Award within a mandatory time period – something over which it had complete control. The district court's decision to try to sidestep the requirements of Minn. Stat. Ch. 572 has not served the interest of speed, efficiency and finality that underlie the Legislature's preference for alternative dispute resolution. This Court should reverse the action of the district court and remand with instructions to confirm the Arbitration Award as it was initially made.

Dated: April 1, 2005

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ADDENDUM

Minn. Stat. § 572.16 Change of award by arbitrators.

Subd. 1. Application of party. On application of a party, the arbitrator may modify or correct the award:

- (1) upon the grounds stated in section 572.20, subdivision 1;
- (2) for the purpose of clarifying the award; or
- (3) where the award is based on an error of law.

Subd. 2. Submission by court. If an application to the court is pending under section 572.18, 572.19, or 572.20, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 572.20, subdivision 1, or for the purpose of clarifying the award.

Subd. 3. Procedure. For purposes of subdivision 1 or 2, the application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that the opposing party must serve objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of sections 572.18, 572.19 and 572.20.

Minn. Stat. § 572.18 Confirmation of an award.

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 572.19 and 572.20.

Minn. Stat. § 572.19 Vacating an award.

Subd. 1. Application. Upon application of a party, the court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 572.12, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 572.09 and the party did not participate in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

Subd. 2. Time limit for application. An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

Subd. 3. Rehearings. In vacating the award on grounds other than stated in clause (5) of subdivision 1, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 572.10, or, if the award is vacated on grounds set forth in clauses (3) and (4) of subdivision 1, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 572.10. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

Subd. 4. Confirm award. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Minn. Stat. § 572.20 Modification or correction of award.

Subd. 1. Modification of award. Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

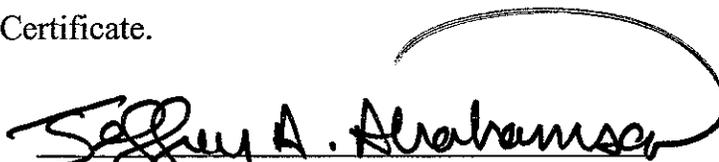
Subd. 2. Court disposition. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

Subd. 3. Joinder in alternative. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

CERTIFICATE OF COMPLIANCE

The undersigned counsel for Appellant Green Gardens Nursery and Landscape, Inc. certifies that this brief complies with the requirements of Minn. R. App. P. 132.01, subds. 1 and 3, in that it is printed in a 13-point, proportionately spaced typeface utilizing Microsoft Word 2002 and contains 2,850 words, excluding the Cover, Table of Contents, Table of Authorities, Addendum, and this Certificate.

Dated: April 1, 2005

A handwritten signature in black ink, reading "Jeffrey A. Abrahamson". The signature is written in a cursive style with a large, sweeping loop at the end of the name.

Philip R. Schenkenberg (#260551)

Jeffrey A. Abrahamson (#338187)