

MICHIGAN SUPREME COURT

PUBLIC HEARING

May 20, 2015

CHIEF JUSTICE YOUNG: Good morning. Justice Mary Beth Kelly is away this morning on Court business and will be viewing via our streaming the process this morning. This is our public administrative hearing. It's the opportunity for members of the public to comment on various of our administrative rule changes that have been proposed and published for comment. And we have today a number of them, but the only one that is endorsed for comment happens to be Item 3 I believe - is that correct - Item 3 - 2014-12 - and that is a proposed change to MCR 3.211 that would allow parties to stipulate in their judgment of divorce, separate maintenance, or annulment to postjudgment binding arbitration of identified personal property under a particular statute. And I believe we have Matthew Kobliska on behalf of the Family Law Section to speak to this issue. You have three minutes.

ITEM 3 2014-12 - MCR 3.211

MR. KOBLISKA: Good morning, Justices. As I appear to be the only speaker here today, I'll refer to this as my private audience with the Michigan Supreme Court.

CHIEF JUSTICE YOUNG: Yeah, it is.

MR. KOBLISKA: As we all know, arbitration is favored under Michigan law - it's sufficient, it's fast, it's an expensive - it's fair, but I would submit that nowhere is arbitration more useful than in the domestic relations arena and in particular with regard to the division of personal property. When we're talking about personal property we're talking about obviously household contents, but it could be farm equipment, it could be the beloved household pets, it could be a whole laundry list of things. And trial court judges neither have the time nor the inclination to make an equitable division of personal property. Arbitrators on the other hand do - can and do perform onsite personal property arbitrations where they appear and actually make rulings which are binding on the parties and final as to how the household contents or whatever it is we're talking about - the contents of a shed or a barn or whatever the case may be - how they're to be equitably divided. Ideally, this would occur

prejudgment, but in the rough and tumble of the final settlement negotiations which usually involve major issues such as child custody, support, parenting time, spouse support, real property you know the big things, quite often what's left at the end of the list is the division of personal property which can be somewhat time consuming. So it's been a useful tool - postjudgment arbitration has been a useful tool for family law practitioners to enable us to enter a judgment, get the matter resolved, allow the parties to move on, but have this postjudgment arbitration to allow us to deal with the personal property. Now there are some judges who do not believe that they have the authority to do that. There was an unpublished decision called *Bonner v Bonner* which is referenced in my public policy report which indicates that postjudgment arbitration is not final, it's a bifurcation of trial and impermissible. And even though it's unpublished some judges feel that that's the direction that they must go. I would say by and large though most judges do allow for postjudgment arbitration of personal property. We believe that this amendment would provide clarity, would provide uniformity among the circuits. The Family Law Section unanimously supported it. The Alternative Dispute Resolution Section unanimously supported it. The State Bar Board of Commissioners unanimously supported it. And the Michigan Judges Association indicated in their response that - along the lines of what I've indicated here that it's been a common procedure in family cases as litigating personal property issues in divorce cases generally makes little economic sense, but leaving this issue unresolved in a judgment has previously rendered the judgment non-final for appellate purposes. The Executive Board of the Michigan Judges Association voted to support this amendment provided that postjudgment arbitration is approved by the court. So I think we have broad support for this -

JUSTICE VIVIANO: Counsel, were there any dissenting views?

MR. KOBLISKA: No.

JUSTICE VIVIANO: Is it fair to conclude that everyone thinks this would make the resolution of cases more efficient?

MR. KOBLISKA: Yes.

JUSTICE VIVIANO: That includes at less cost to the parties.

MR. KOBLISKA: Yes.

JUSTICE VIVIANO: Does that include timeliness - that cases will actually be resolved in a more timely fashion instead of less timely -

MR. KOBLISKA: Yes.

JUSTICE VIVIANO: even though this issue will be left open?

MR. KOBLISKA: In fact, the beauty of it is is that most of these cases never - never get to the arbitration. A typical judgment would say something like personal property has to be - the parties must agree on the allocation of personal property between them or within 14 days it will be arbitrated.

JUSTICE VIVIANO: That's sort of - is there a time - there's no time limit in the rule.

MR. KOBLISKA: No, there isn't.

JUSTICE VIVIANO: Is it typically done within a certain period of days like you said. I mean 14 would give us - at least me a lot of comfort. You know 180 days or 365 days probably less so. Should we be concerned about that?

MR. KOBLISKA: I don't believe so. There are -

CHIEF JUSTICE YOUNG: Why not? Why not?

MR. KOBLISKA: a number of practitioners who do personal property arbitrations - it is kind of a specialized skill and -

CHIEF JUSTICE YOUNG: But this - but the rule that you're proposing does make it a plenary tool for everybody -

MR. KOBLISKA: Yes.

CHIEF JUSTICE YOUNG: not just the specialists who have either high-end estates or something else. I think the thing that troubles me and it might be implicit in what Justice Viviano is suggesting is if you take and separate out from resolution of the entirety of the proceeding the property settlement, then you actually do create a - an incentive in some cases for people to stall. There's no endpoint to when arbitration has to cease under the rule as proposed. You don't see any possibility that this would tend - this rule if put in place would tend to expand the time it takes to resolve these proceedings.

MR. KOBLISKA: Your honor, in part that question is resolved by simply good lawyering.

CHIEF JUSTICE YOUNG: Well, I'd hate to rely solely on good lawyering when there is motivation of the parties in some cases to extend, protract, particularly in domestic situations where the parties are usually not very amicable toward one another.

MR. KOBLISKA: But nevertheless the court has nothing left to do. The -

CHIEF JUSTICE YOUNG: Finality of everything else depends on the finality of the property settlement, does it not?

MR. KOBLISKA: I don't believe that that as stated is true. *Ruyaker* (phonetic) and *Spitz* stands for the proposition that because - even though there's - there is arbitration to take place because it's binding arbitration the court is finished with it - there's nothing more that the court need do with regard to that case -

CHIEF JUSTICE YOUNG: There's no final judgment under at least - there's no final judgment is there?

MR. KOBLISKA: Yes.

CHIEF JUSTICE YOUNG: There is a final judgment.

MR. KOBLISKA: Yes, I believe that there is a final judgment because the arbitration is binding, the court is done with it, there isn't anything further that's done in court. The only option that a party might have would be to challenge the impartiality of the arbitrator - one of the other bases that are set forth in the Domestic Relations Arbitration Act.

CHIEF JUSTICE YOUNG: So while the arbitration is pending, a party can appeal the judgment as to all the other - child custody and all those issues, right?

MR. KOBLISKA: Yes. Yes, your honor.

CHIEF JUSTICE YOUNG: Really? Why would you suggest that?

MR. KOBLISKA: Well, again, I guess referring to the *Ruyaker* case it indicates that a judgment which contains a binding arbitration decision is, in fact, a final judgment.

CHIEF JUSTICE YOUNG: Okay. Thank you.

JUSTICE VIVIANO: If we were - if you were going to suggest a number of days for a time limit, what would that number look like?

MR. KOBLISKA: I guess -

JUSTICE VIVIANO: If we thought - you know assuming we thought one might be necessary.

MR. KOBLISKA: From a practitioner's standpoint, that's very difficult to say because we're dependent upon - there are some arbitrators that we might have to schedule 60 days out just because of the time. Sheldon Larky, for instance, who submitted a comment to this proposed rule does - as he indicates - 45 of these a year so he spends most of his Saturdays doing personal property arbitrations. So if that is - if your choice is to use Mr. Larky for example then you might have to wait 6 or 7 weeks before he would be available so.

JUSTICE VIVIANO: 60 days - is that what I heard?

MR. KOBLISKA: I would think that in the vast majority of cases 60 days would be more than enough time.

JUSTICE VIVIANO: Okay, thank you, counsel?

MR. KOBLISKA: Any further questions? Thank you very much.

CHIEF JUSTICE YOUNG: Thank you. There being no other endorsed speakers the public hearing is concluded. Thank you.