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# ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-569

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| JOHN E. PARKS and REENA PARKS<br><br>APPELLANTS<br><br>V.<br><br>ROGERS GROUP, INC.<br><br>APPELLEE | **Opinion Delivered** February 9, 2011<br><br>APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT<br>[NO. CV-05-119]<br><br>HONORABLE DAVID H. MCCORMICK, JUDGE<br><br>AFFIRMED |

**CLIFF HOOFMAN, Judge**

Appellants John E. Parks and Reena Parks appeal from the Conway County Circuit Court's order denying their petition to vacate an arbitration award entered against them. Appellants are owners of a rock quarry in Conway County. Appellants and appellee Rogers Group, Inc., executed a lease agreement dated January 18, 2001, which allowed Rogers Group to mine rock and stone from appellants' property. As the initial five-year term of the lease agreement was drawing to a close, appellants notified Rogers Group that they were terminating the lease. Rogers Group informed appellants that they did not wish to terminate the lease but instead intended to allow the lease to renew automatically as provided in paragraph two of the lease agreement. Paragraph two of the lease agreement provides as

follows:

> The original term of this Lease shall be for the period of five (5) years commencing on the 20th day of June, 2000. This Lease shall continue to be renewed automatically for successive periods of one (1) year each until Lessee gives Lessor, at least thirty (30) days before the expiration of the original term or any renewal thereof, written notice of termination. Termination of this Lease as provided in this paragraph shall be effective upon the expiration of the term in which the notice is given.

Appellants then sued Rogers Group requesting that the court declare the rights of appellants to terminate the lease agreement. Rogers Group moved to compel arbitration under the provision in the lease providing for disputes to be settled by arbitration, which is "binding and conclusive on the parties." The circuit court issued a stay in the case and ordered appellants to submit their claims to arbitration. In July of 2009, an arbitration panel issued a reasoned award finding that appellants could not terminate the lease as they had attempted to do. The panel found that the renewal provisions of the lease constituted an express covenant for continued renewals.

Appellants subsequently filed an application in circuit court to vacate the award regarding the renewal provisions of the lease. Appellants alleged that the arbitrators exceeded their powers by making a finding that manifestly disregarded the law of the state of Arkansas regarding the language needed to create a perpetual lease. The Conway County Circuit Court denied the application to vacate the award by its order entered March 18, 2010. Appellants appeal from this order.

The party attempting to overturn an award bears the burden of proof. *Hart v.*

*McChristian*, 344 Ark. 656, 668, 42 S.W.3d 552, 560 (2001). Significantly, the court's role is not to determine if the arbitrators decided the dispute correctly but only whether the arbitrators acted within their jurisdiction. *Id.* Indeed, our deference is so great that the failure of the arbitrators to follow the law as a court would have done provides no grounds for relief. *Id.* Mistakes of law or fact are insufficient to set aside an award. *Id.*

Appellants' sole point on appeal is that the trial court erred in denying their application to vacate the arbitration award. Appellants argue that we should recognize that an arbitration award may be vacated on the basis of manifest disregard of the law and that the arbitration award in this case manifestly disregarded the law of Arkansas.

Appellants recognize that an arbitration award may not be vacated for merely making a mistake in the application of the law. Specific grounds for vacating an award are set out in Ark. Code Ann. § 16-108-212(a) (Repl. 2006), which provides as follows:

> (a) Upon application of a party, the court shall vacate an award in which:
> (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 therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 16- 108-205, as to prejudice substantially the rights of a party; or
> (5)(A) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 16-108-202 and the party did not participate in the arbitration hearing without raising the objection;

> (B) But the fact that the relief was such that it could not or would not be granted by a court is not ground for vacating or refusing to confirm the award.

Appellants claim that Arkansas and other states have recognized an additional basis for vacating an award. They claim this basis is predicated upon section 16-108-212(a)(3) and is known as "manifest disregard of the law." Appellants claim that the requirements for vacating an award based on manifest disregard of the law are that the issue goes beyond a mere mistake of the law or difference of opinion to the extent that an arbitrator who is aware of the law disregards the law. Appellants have failed to show that this award did in fact disregard the law.

Appellants claim that there is no doubt from the face of the award itself that the arbitrators were fully aware of the law in Arkansas as stated in *Pults v. City of Springdale*, 23 Ark. App. 182, 745 S.W.2d 144 (1988), and chose to disregard it. Appellants claim that the arbitrators disregarded the fact that the *Pults* case stated that the word "automatically" in a lease would not overcome the presumption against a perpetual lease. Appellants claim that the arbitrators completely ignored three factors set out in the *Pults* case that are required for a determination that a perpetual lease was intended: (1) lease language such as "forever," "for all time," or "in perpetuity"; (2) an escalation clause; (3) restrictions on use and subletting.

Appellants have mischaracterized the holding of *Pults*. That case involved a lease agreement in which the City of Springdale agreed to lease to a flying services company an airplane hangar area of the city airport. The lease was for a one-year period but gave the company an option to renew "for successive terms of one year each, commencing

immediately upon the termination of the proceeding period." *Pults*, 23 Ark. App. at 185, 745 S.W.2d at 146. When the city notified Pults, the assignee of the lessee's interest, that the lease would not be renewed, Pults sued the city for breach of contract. The circuit court ruled that the lease should be construed to provide for only a single renewal, and this court affirmed that ruling. The *Pults* court noted that the use of certain language in a lease "does not necessarily imply a covenant for perpetual renewals, especially when such terms, when considered with the context of the lease and the acts of, and circumstances surrounding, the parties, indicate a contrary intention." As an example, the court cited *Lonergan v. Connecticut Food Store, Inc.*, 357 A.2d 910 (1975), where the Connecticut Supreme Court held that a lease providing that it "shall automatically be extended for a period of one year and thence from year to year" gives the lessee the right to renew only once. This does not, as appellants claim, establish that the law in Arkansas is that the word "automatically" in a lease will never overcome the presumption against a perpetual lease.

The factors in *Pults* listed by appellants were not an exclusive list of requirements for creating a perpetual lease. Instead, we said that those factors, among others, have been used by courts to determine whether parties intended to create a perpetual lease.

In construing any contract, the court seeks to ascertain the intent of the parties. The *Pults* court attempted to ascertain the intent of the parties by examining the language of the lease, the context of the lease, and the acts of and circumstances surrounding the parties. Several factors were noted by the court that indicated that the parties did not intend to create

a perpetual lease: (1) the lease provided for rental at a nominal sum and there was no provision for the possibility of increased rent in the future; (2) there was no peculiar language indicating that a perpetual lease was intended; (3) there were significant restrictions on use; (4) the lease contemplated that the FAA might require removal of the hangars. *Pults*, 23 Ark. App. at 187, 745 S.W.2d at 147.

It is clear that the arbitrators applied the law as stated in *Pults*. The arbitrators attempted to ascertain the intent of the parties by examining the language of the lease, the context of the lease, and the acts of and circumstances surrounding the parties. The award states that "the facts in the *Pults* case are distinguishable from this case and its holding does not apply here." The arbitrators note that the hangar in *Pults* was already built and the rent was nominal, as well as the fact that the renewal language of the *Pults* lease was not as specific as the language in this lease. The award notes that the mining lease here required a substantial capital investment by Rogers Group, such that Rogers Group intended the lease to continue for an extended period of time. The arbitrators note that appellants are paid a minimum annual royalty and a twenty-five-cent royalty for each ton, which is a fair market rate for stone and rock from rural quarries. They also state that the renewal language in this lease is more specific than an ordinary covenant to renew. The arbitrators were correct in noting that language providing that the lease shall continue to be renewed automatically was not in the *Pults* lease. In determining the intent of the parties, the arbitrators also considered the fact that the lease was signed by appellants after much study by their family.

The arbitration panel found that the renewal provisions of the lease constituted an express covenant for continued renewals and reflected the intent of the parties. It is not for us to determine if the arbitrators decided the dispute correctly, but we do hold that they acted within their jurisdiction. They considered the *Pults* case, applied the law as stated in that case, and factually distinguished the analysis and result in *Pults* from the present case. The failure of the arbitrators to follow the law as a court would have done provides no grounds for relief. *Hart v. McChristian*, 344 Ark. 656, 668, 42 S.W.3d 552, 560 (2001). We affirm the circuit court's order denying the application to vacate the arbitration award.

GLADWIN and BROWN, JJ., agree.