

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 15, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 02-1026

Cir. Ct. No. 99-CV-218

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

RICHARD GOHLKE,

PLAINTIFF-RESPONDENT,

v.

**DIDION MILLING, INC., A WISCONSIN CORPORATION,
F/K/A DIDION, INC., A WISCONSIN CORPORATION,**

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: HENRY B. BUSLEE, Judge. *Affirmed.*

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. Didion Milling, Inc. appeals from the judgment entered against it and in favor of Richard Gohlke. Didion argues on appeal that the arbitrators exceeded their powers by allowing Gohlke's claim against it to proceed when the statute of limitations had expired. The arbitrators determined

that under the rules of the National Grain and Feed Association (NGFA), the statute of limitations had not expired. The circuit court agreed. We affirm.

¶2 Gohlke, who is not a member of NGFA, brought an action in circuit court against Didion for breach of contract and fraud. Didion is an NGFA member. Gohlke was contesting certain rent payments made to him by Didion in 1997. Didion then brought a motion to stay the proceedings pending arbitration. Gohlke opposed the motion. The circuit court granted the stay by an order dated August 20, 1999. On August 25, 1999, Gohlke filed his claim with the NGFA.

¶3 Didion argued before the arbitrators, the circuit court, and here that Gohlke's claim was not timely under the NGFA rules. Those rules provide that a complaint must be filed with the National Secretary within twelve months after the claim arises or the date for the performance of the contract at issue. The rules further provide: "For cases between a member and nonmember arbitrated pursuant to court order, the complaint must be filed within 30 days of issuance of court order."

¶4 Didion and Gohlke's agreement provided that any disputes between them would be subject to binding arbitration before and subject to the NGFA's rules. Didion argues that under these rules Gohlke was required to file his complaint within one year of the occurrence at issue. Instead, Gohlke filed his claim within thirty days of the date the court ordered arbitration, but more than two years after the claim arose. Therefore, Didion argues, his claim is time barred. The National Secretary of the NGFA ruled that Gohlke's claim was timely under the rules because Gohlke was a nonmember and filed his complaint within thirty days of the court's order. Both the NGFA's Arbitration Committee and the NGFA's Arbitration Appeals Committee agreed with the National Secretary's

determination on the statute of limitations issue. Didion appealed to the circuit court and the circuit court affirmed the award.

¶5 The standard of review for arbitration awards is generally very limited. “When reviewing an arbitration award the function of the courts is essentially supervisory, ensuring that the parties received the arbitration for which they bargained. Courts will overturn an arbitration award only if there is ‘a perverse misconstruction or if there is positive misconduct plainly established, or if there is a manifest disregard of the law, or if the award is illegal or violates strong public policy.’” *Lukowski v. Dankert*, 184 Wis. 2d 142, 149, 515 N.W.2d 883 (1994) (citations omitted).¹

¶6 Didion argues, in essence, that the determination that Gohlke’s claim was timely was a “manifest disregard of the law.” We disagree. The rule Didion relies on plainly establishes a different statute of limitations for disputes between members and disputes between a member and a nonmember. It is undisputed that Gohlke was not an NGFA member. Three levels of decision makers of the NGFA ruled that because Gohlke was not an NGFA member, his claim was timely. The circuit court agreed. Even without our limited standard of review, we would not conclude that this decision was incorrect. We affirm the decision of the NGFA and the circuit court.

¶7 Gohlke also asks that we find that Didion’s appeal was frivolous under WIS. STAT. RULE 809.25 (1999-2000). We decline to do so. For the reasons stated, the judgment of the circuit court is affirmed.

¹ In its brief, Didion misstates our standard of review.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5 (1999-2000).

