

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 16, 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. 02-1393
STATE OF WISCONSIN**

Cir. Ct. No. 99-CV-127

**IN COURT OF APPEALS
DISTRICT II**

ANITA J. ZEIHEN,

PLAINTIFF-APPELLANT,

v.

**LEONARD L. LOEB, INDIVIDUALLY, LOEB, HERMAN &
DREW, A WISCONSIN DOMESTIC SERVICE CORPORATION
AND LOEB & HERMAN, S.C., A WISCONSIN DOMESTIC
SERVICE CORPORATION, SUCCESSOR IN INTEREST,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Kenosha County:
BRUCE E. SCHROEDER, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Anita J. Zeihen appeals from a judgment confirming an arbitration award in her fee dispute with the attorney who represented her in her divorce, Leonard L. Loeb and his law firm, Loeb &

Herman, S.C.¹ On appeal, Zeihen argues that the arbitration decision did not encompass her tort claims. We conclude that the arbitration provision contained in Zeihen's fee agreement with Loeb was not ambiguous and that the arbitration process properly encompassed all of Zeihen's claims. Therefore, we affirm.

¶2 Zeihen retained Loeb in October 1991 to represent her in her divorce. Zeihen's fee agreement contains the following arbitration provision: "It is agreed that if any dispute arises with respect to professional fees, the dispute shall be submitted to the Milwaukee Bar Association Fee Arbitration Committee for resolution." Loeb billed Zeihen \$84,000 in fees; Zeihen paid \$26,906 and declined to pay additional fees for the services rendered. In February 1999, Zeihen sued Loeb alleging that Loeb's fees were excessive and that his efforts to collect the fees were objectionable. She also alleged fraud, misrepresentation, negligence, infliction of emotional distress and breach of contract. She sought compensatory and punitive damages on the tort claims and cancellation of the attorney's fees on the contract claims. Loeb moved to stay circuit court proceedings in favor of arbitration as required by the fee agreement. Zeihen objected to arbitrating the tort claims. The circuit court granted Loeb's motion to arbitrate all claims.²

¶3 The Milwaukee Bar Association arbitration panel found that only \$30,000 in fees was reasonable. Zeihen moved the circuit court to confirm the

¹ The firm was formerly known as Loeb, Herman & Drew. The court is advised that Leonard Loeb died during the pendency of this appeal.

² One of Zeihen's claims related to a postdivorce support matter. The parties agree that this claim was not subject to arbitration, and the circuit court did not refer this claim to arbitration. The parties ultimately settled this claim.

arbitration award, but reasserted her claim that the arbitration proceeding did not encompass all of her claims. The circuit court disagreed and entered a judgment against Zeihen for the difference in fees between what Zeihen paid and the arbitration panel awarded. Zeihen appeals.

¶4 The first issue on appeal is whether the circuit court erred in referring Zeihen's claims to arbitration. In deciding to stay circuit court proceedings in favor of arbitration, the circuit court found that Zeihen's various claims "have as a common source her claim that the legal fees which she was charged in the divorce ... were excessive." The court determined that the arbitration clause in the fee agreement was not ambiguous. The court rejected Zeihen's argument that the fee agreement's arbitration clause was procured by fraud and held that her fraud claim did not arise until she received Loeb's bill for services in 1993, well after she signed the fee agreement.

¶5 In order to determine whether Zeihen's claims were properly sent to arbitration, we must construe the fee agreement containing the arbitration clause. Contractual language is ambiguous only when it is reasonably susceptible of more than one construction. *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). Construction of a contract, including the determination of whether its terms are ambiguous, is a legal question which we decide de novo. *Id.* We start with the contract's language to ascertain and give effect to the parties' intent. *See Wis. Label Corp. v. Northbrook Prop. & Cas. Ins. Co.*, 2000 WI 26, ¶¶23, 233 Wis. 2d 314, 607 N.W.2d 276. If the terms of the contract are plain and unambiguous, we construe the contract as it stands and apply its literal meaning. *See id.* at ¶24.

¶6 The fee agreement states: “It is agreed that if any dispute arises with respect to professional fees, the dispute shall be submitted to the Milwaukee Bar Association Fee Arbitration Committee for resolution.” Read in its entirety, the arbitration provision unambiguously states that if there is a dispute regarding attorney’s fees, that dispute shall be submitted to arbitration for resolution.³ We agree with the circuit court that all of Zeihen’s claims arise from her objection to Loeb’s fees. An agreement to arbitrate implies an agreement to be bound by the outcome of the arbitration. *See Stradinger v. City of Whitewater*, 89 Wis. 2d 19, 31, 277 N.W.2d 827 (1979).⁴

¶7 Zeihen argues that the arbitration clause is against public policy because it exploits the superior position of the attorney over the client. Zeihen does not cite any authority for this specific proposition. Arbitration agreements are not generally against public policy. *See Manu-Tronics, Inc. v. Effective Mgmt. Sys., Inc.*, 163 Wis. 2d 304, 311, 471 N.W.2d 263 (Ct. App. 1991) (arbitration is a valuable alternative to litigation). Under WIS. STAT. § 788.01 (2001-02), arbitration clauses are valid and enforceable. We are not persuaded by Zeihen’s arguments.

¶8 After entry of the arbitration award, Zeihen moved the circuit court to confirm the award which favored her on the question of the reasonable amount

³ Because we conclude that the arbitration provision is not ambiguous, we do not address Zeihen’s request to construe the agreement against Loeb as the drafter. We construe an agreement against the drafter only if the contract is ambiguous. *See Dairyland Equip. Leasing, Inc. v. Bohlen*, 94 Wis. 2d 600, 609, 288 N.W.2d 852 (1980).

⁴ Zeihen claims that the arbitration agreement was procured by fraud. The circuit court disagreed and noted that Zeihen did not make this allegation in response to Loeb’s motion to stay circuit court proceedings in favor of arbitration.

of fees.⁵ Zeihen also sought to litigate her claims for emotional distress, breach of contract and negligence. The circuit court denied her request to litigate these claims because they were the subject of the arbitration.

¶9 We have already held that the parties' arbitration agreement covered all of Zeihen's claims arising from the allegedly excessive fees. The rules of the Milwaukee Bar Association arbitration committee state that it "may grant any other remedy or relief that the Panel deems just and necessary that is within the scope of the agreement of the parties ... in order to effectuate the arbitration award." We note that Zeihen presented an affidavit and a report from her psychiatrist to the arbitration panel relating to her tort claims. The arbitration panel had the authority to address all of the claims referred by the circuit court because they arose from the allegedly excessive fees.

¶10 Zeihen complains that she did not receive her day in court on those claims for which she sought compensatory and punitive damages. However, she agreed to an arbitration clause in the fee agreement, and the clause is neither ambiguous nor contrary to public policy. Because all of Zeihen's claims were within the scope of the arbitration, the circuit court did not err in declining to permit her to litigate them post-arbitration.⁶

⁵ We do not agree with Loeb that Zeihen waived her right to challenge the order to arbitrate. Throughout the litigation, Zeihen has consistently objected to arbitration.

⁶ To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5 (2001-02).

