

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MAY 29, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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

No. 95-2602

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

LUANN GERL,

Petitioner-Appellant,

v.

PHILLIP M. STEANS,

Respondent-Respondent.

APPEAL from an order of the circuit court for Barron County:
JAMES C. EATON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Luann Gerl, pro se, appeals an order confirming an arbitration award of \$3,150.47 arising out of a fee dispute with her former attorney, Phillip Steans. Because the record fails to disclose any grounds for overturning the arbitration award, we affirm the order.

Gerl retained Steans to represent her with regard to a criminal prosecution for charges of felony theft by employee. Gerl and Steans entered

into a written fee agreement providing that the "entire attorney's fees" would be \$20,000. The agreement also provided:

I understand that your representation may require the use of various experts such as accountants and/or investigators, and I hereby authorize your incurring expenses for such experts, provided, however, that I be notified when they are retained and their estimated fees.

I understand that expert's fees, as well as all other costs and disbursements, are in addition to the attorney's fees.

Gerl paid Steans \$20,000, but a fee dispute arose over the sums Steans billed for costs. By written agreement, the dispute was submitted to arbitration. Both parties agreed to be bound by the arbitration decision.

The arbitrators found that the clause regarding costs and disbursements was ambiguous, because it could relate either to payments for experts, or payments for other costs and disbursements. The arbitrators concluded that because Gerl had received bills for costs and disbursements from Steans during the course of his representation and did not object, she implicitly agreed to Steans' interpretation of the agreement.

The arbitrators also found that Steans partially breached the fee agreement by informing Gerl only of the investigator's hourly fee, and not the total estimated fee. However, the arbitrators concluded that Steans advised Gerl that he hired an investigator, and Gerl objected not to being billed for his services, but rather to the manner in which he conducted his investigation. They concluded that under the terms of the agreement, Gerl was to be charged separately for the investigator's services, and that Steans' partial breach did not relieve Gerl of her obligation to pay for the investigator's services. The investigator's bill was \$1,202.03.

The arbitrators found that of the \$20,000 Gerl paid Steans, \$322.20 was paid to court reporters. In addition, Steans billed Gerl \$3,014.27 for costs.

Because Steans has relinquished charges of \$12 for unidentified costs, \$120 for travel expenses and \$54 for payments to the clerk of court that could not be verified, the panel awarded Steans \$3,150.47 as due according to the fee agreement.

Steans moved the circuit court for an order confirming the award. The trial court confirmed the award pursuant to ch. 788, STATS. Gerl appeals the order.

Gerl argues that Steans violated their fee agreement when he (1) charged her costs not included in the fee agreement; (2) failed to obtain client approval to incur the costs of an investigator; (3) did not submit a detailed ledger accounting for his fees, but sent bills that even an arbitrator found confusing; (4) incurred costs beyond those contemplated by the agreement; (5) refused to subpoena evidence for the criminal trial; and (6) violated attorney-client confidentiality by permitting unauthorized office personnel access to her file. She further argues that the \$20,000 fee paid to Steans exceeds the fees and costs incurred.

After arbitration, the court's role is limited. An arbitrator's award is presumptively valid and will be disturbed only when its invalidity is demonstrated by clear and convincing evidence. *Milwaukee Bd. Sch. Dirs. v. Milwaukee Teachers' Educ. Ass'n*, 93 Wis.2d 415, 422, 287 N.W.2d 131, 135 (1980). We review the arbitrator's award without deference to the circuit court's decision. See *Lukowski v. Dankert*, 184 Wis.2d 142, 149, 515 N.W.2d 883, 886 (1994).

When reviewing an arbitration award, the court's function is essentially supervisory, ensuring that the parties received the arbitration for which they bargained. *Id.* Courts are guided by the general statutory standard listed in §§ 788.10 and 788.11, STATS.,¹ and by the standards developed at

¹ Section 788.10, STATS., provides:

Vacation of award, rehearing by arbitrators. (1) In either of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any

common law. *Id.* at 150-51, 515 N.W.2d at 886. If these general standards are not violated, the circuit court will confirm the arbitration award. *Id.* at 151, 515 N.W.2d at 886. Courts will overturn an arbitration award only if there is a perverse misconstruction or if there is positive misconduct plainly established,

(..continued)

party to the arbitration:

- (a) Where the award was procured by corruption, fraud or undue means;
 - (b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;
 - (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
 - (d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.
- (2) Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

Section 788.11, STATS., provides:

Modification of award. (1) In either of the following cases the court in and for the county wherein the award was made must make an order modifying or correcting the award upon the application of any party to the arbitration:

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;
 - (b) Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted;
 - (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.
- (2) The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

or if there is a manifest disregard of the law, or if the award is illegal or violates strong public policy. *Id.* at 149, 515 N.W.2d at 886; see *Whitewater Educ. Ass'n v. Whitewater Unified Sch. Dist.*, 113 Wis.2d 151, 157, 335 N.W.2d 408, 411 (Ct. App. 1983) (decisions of an arbitrator cannot be interfered with for mere errors of judgment as to law or fact).

The written agreement provided for \$20,000 attorney fees, plus costs and disbursements in addition to attorney fees. The record discloses no evidence of fraud, corruption, misconduct, misbehavior or evident partiality by the arbitrators. There is no showing that they exceeded their powers or imperfectly executed them. There is no showing of any miscalculation. The record fails to reveal any grounds on which to overturn or modify the arbitration award.

Gerl attaches many documents to her briefs that she claims support her position. These documents are not referenced to the appellate record, nor do they appear to be part of the appellate record. See § 809.19(1), STATS. We may not consider documents not made part of the record before us on appeal. *Jenkins v. Sabourin*, 104 Wis.2d 309, 313-14, 311 N.W.2d 600, 603 (1981).

Gerl claims that the arbitrators were rude and treated her unfairly. However, her challenges fail to address the standards we must apply on review of an arbitration award. To the extent Gerl claims the arbitrators evinced partiality to Steans, Gerl fails to demonstrate a factual basis. As a result, Gerl demonstrates no ground for overturning the award.

By the Court. – Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.