

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 7, 2020 Session

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PROVECTUS BIOPHARMACEUTICALS, INC. v. PETER R. CULPEPPER

Appeal from the Chancery Court for Davidson County
No. 18-1077-III Ellen H. Lyle, Chancellor

No. M2019-00662-COA-R3-CV

The dispositive issue in this appeal is whether an amended pleading that seeks to vacate an arbitration award that was delivered to the parties more than 90 days earlier relates back to the date of the original pleading pursuant to Rule 15.03 of the Tennessee Rules of Civil Procedure when the original pleading only sought to modify the arbitration award. A dispute arose when an employer terminated the employment contract of its chief financial officer. The parties submitted the dispute to arbitration pursuant to the Tennessee Uniform Arbitration Act (“the Act”), Tenn. Code Ann. § 29-5-301 to -320. After the arbitrator issued a monetary award in favor of the corporation, the employer filed a petition to confirm the award in chancery court. Within 90 days of the delivery of a copy of the award to the employee, which is the limitation period set forth in Tenn. Code Ann. § 29-5-314(a) of the Act, the employee timely filed an answer to the petition in which he sought modification of the award with respect to prejudgment interest only. Otherwise, the employee admitted all material allegations in the petition. Significantly, the employee did not seek to vacate the award. After waiving any claim to prejudgment interest, the employer filed a motion for judgment on the pleadings to confirm the arbitration award in all other respects. Before the hearing on the motion, but more than 90 days after a copy of the award was delivered to the employee, the employee filed a Rule 15 motion to amend his answer to assert a counterclaim to vacate the award on grounds not previously raised. The trial court denied the employee’s Rule 15 motion to amend the answer as futile on the ground that it was not a timely application to vacate the final award and awarded the employer judgment on the pleadings. The employee appeals, contending the court erred because an amended pleading relates back to the date of the original pleading pursuant to Rule 15.03. We have determined that strict adherence to the 90-day limitation furthers the primary objectives of the Act, which is to bring the arbitration process to a speedy and final resolution. Furthermore, the limitations provided by Tenn. Code Ann. §§ 29-5-312 and -313(b) are more specific than the general relation-back provision of Tenn. R. Civ. P. 15.03. Therefore, we affirm the trial court’s denial of the motion to amend the answer as futile on the ground that the employee did not file a

timely application to vacate the final award, and we affirm the entry of judgment on the pleadings in favor of the employer.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and W. NEAL MCBRAYER, J., joined.

Thomas M. Leveille, Knoxville, Tennessee, for the appellant, Peter R. Culpepper.

Martha L. Boyd, Samuel L. Felker, and Brittany B. Simpson, Nashville, Tennessee, for the appellee, Provectus Biopharmaceuticals, Inc.

OPINION

Provectus Biopharmaceuticals, Inc. (“Provectus”) employed Peter R. Culpepper (“Culpepper”) from February 2004 through December 2016 pursuant to a series of employment agreements. For most of this period, Culpepper served as the chief financial officer, but he also briefly served as the interim chief executive officer.

The employment agreement in effect when this dispute arose required the parties to submit disputes relating to Culpepper’s employment to binding arbitration. In December 2016, Provectus gave Culpepper notice that it was terminating his employment “for cause” and asserting a claim to, *inter alia*, recover undocumented travel expenses and funds Culpepper owed. Culpepper took exception to Provectus’s decision, and the parties agreed to submit their dispute to binding arbitration before the American Arbitration Association in Davidson County, Tennessee.

On July 12, 2018, the arbitrator issued an interim award in favor of Provectus finding that Provectus terminated Culpepper “for cause” and that Provectus was entitled to a monetary judgment against Culpepper for more than two million dollars. This award included Culpepper’s undocumented travel expenses and amounts he owed under a previously executed settlement agreement. The arbitrator issued the final order on September 12, 2018, which addressed Provectus’s request for attorneys’ fees and costs and awarded Provectus a total of \$2,819,019.87. A copy of the final order was delivered to the parties on the same date.

On October 4, 2018, Provectus filed a Petition to Confirm Arbitration Award in Davidson County Chancery Court attaching the July and September awards as exhibits. Culpepper, proceeding *pro se*, timely filed an answer on November 7 asserting as an affirmative defense an application to modify the arbitration award pursuant to Tenn. Code Ann. § 29-5-314 but only with respect to certain items of prejudgment interest. Otherwise, he admitted all material allegations in the petition to confirm the award.

Shortly following, Provectus filed a motion for judgment on the pleadings in which it waived prejudgment interest and asked the court to confirm the final arbitration award in all other respects.

While still acting *pro se* and without seeking leave from the court to amend his answer, Culpepper filed an amended answer on December 11, 2018, in which he requested the court to “review the award” pursuant to Tenn. Code Ann. § 29-5-314 for “a conflict of interest by the opposing counsel and the attendant misconduct of the Arbitrator.” Shortly thereafter, Culpepper obtained counsel.

On January 10, 2019, and prior to the hearing on Provectus’s motion for judgment on the pleadings, Culpepper’s counsel filed a motion seeking leave to amend the answer. Attached to the motion was the proposed “Second Amended Answer”¹ in which he asserted a counterclaim seeking to vacate the arbitration award pursuant to Tenn. Code Ann. § 29-5-313(a)(1). Culpepper alleged that the arbitration award should be vacated on grounds not previously asserted, that (1) it was “procured by corruption, fraud or undue means,” (2) the arbitrator was biased, and (3) the arbitrator “refused to hear evidence material to the controversy and so conducted the hearing as to prejudice substantially the rights of Culpepper.”

Following a hearing on both motions, the trial court denied Culpepper’s Tenn. R. Civ. P. 15 motion for leave to amend his answer and awarded Provectus judgment on the pleadings. The court thereby confirmed the arbitration award with the exception of the award of prejudgment interest that Provectus waived. In pertinent part, the court ruled:

Tenn. Code Ann. § 29-5-313(b) provides that an application to vacate an arbitration award under Tenn. Code Ann. § 29-5-313 must be made within ninety (90) days after delivery of a copy of the award to the applicant. The Final Award was issued on September 12, 2018 and any application to vacate the Final Award was required to be filed by December 11, 2018 pursuant to Tenn. Code Ann. § 29-5-313(b).

. . . . The Court dismisses [Culpepper’s] argument that Rule 15.01 of the Tennessee Rules of Civil Procedure should operate to permit amendment to assert a claim to vacate the Arbitration Award. The explicit wording of Tenn. Code Ann. § 29-5-313(b) indicates to the Court that Rule 15.01 of the Tennessee Rules of Civil Procedure does not apply to the facts before the Court. The Court finds there was not a timely application to vacate the

¹ Culpepper did not properly file his “First Amended Answer” because he did not seek, nor did he obtain, leave of court to amend his pleading pursuant to Rule 15.01 of the Tennessee Rules of Civil Procedure.

Final Award, and therefore [Culpepper's] Motion to Amend is denied as futile.

Culpepper filed a Motion to Alter or Amend Judgment and Order arguing that the trial court erred by denying his Rule 15 motion to amend. The trial court denied Culpepper's motion to amend the judgment. This appeal followed.

ANALYSIS

The dispositive issue in this appeal is whether an amended pleading that seeks to vacate an arbitration award that was delivered to the parties more than 90 days earlier relates back to the date of the original pleading pursuant to the provisions of Tenn. R. Civ. P. 15.03 when the original pleading only sought to modify the arbitration award.

Because he timely filed his application to modify the arbitration award, Culpepper contends his filing of an amended answer relates back to his original filing regardless of the fact that the amended answer seeks to vacate the award on grounds different from the grounds relied upon to modify the award. For its part, Provectus contends the Act treats applications to vacate and applications to modify as separate and distinct. It also contends that the grounds upon which relief is sought must be set forth within the 90-day time frame. Therefore, an application to vacate an award on previously unstated grounds cannot relate back to an application to modify the award. Provectus insists the trial court properly denied Culpepper's motion to amend on the ground of futility because Culpepper did not file a timely application to vacate the award.

The resolution of this dispute requires us to resolve the apparent conflict between the specific time-limitation provisions of the Act and the relation-back provision of Tenn. R. Civ. P. 15. The construction of statutes and procedural rules are questions of law, which we review *de novo* without any presumption of correctness. *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011).

When construing statutes, our role "is to ascertain and effectuate the legislature's intent." *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn. 1997). If the language in a statute is unambiguous, "we must apply its plain meaning without a forced interpretation that would limit or expand the statute's application." *State v. Walls*, 62 S.W.3d 119, 121 (Tenn. 2001); *see Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 803 (Tenn. 2000) (reasoning that "it is not for the courts to alter or amend a statute"). When the statute is ambiguous, "we may reference the broader statutory scheme, the history of the legislation, or other sources." *Lind*, 356 S.W.3d at 895. Pursuant to Tenn. Code Ann. § 29-5-320, we are to construe provisions in the Act so "as to effectuate its general purpose to make uniform the law of those states which enact it." Therefore, for guidance, we may turn to other jurisdictions that have adopted the Uniform Arbitration Act. *Arnold v. Morgan Keegan & Co.*, 914 S.W.2d 445, 448 (Tenn. 1996). As for the construction of

procedural rules, the same general rules of statutory construction apply to rules of procedure. *Lind*, 356 S.W.3d at 895. However, in construing a rule of civil procedure, our goal is to ascertain and give effect to the Tennessee Supreme Court’s intent in adopting the rule. *Thomas v. Oldfield*, 279 S.W.3d 259, 261 (Tenn. 2009).

The Tennessee Uniform Arbitration Act was adopted “(1) ‘to promote private settlement of disputes,’ and (2) to ensure the enforceability of private agreements to arbitrate.” *Morgan Keegan & Co. v. Smythe*, 401 S.W.3d 595, 603 (Tenn. 2013) (quoting *Pugh’s Lawn Landscape Co. v. Jaycon Dev. Corp.*, 320 S.W.3d 252, 257 (Tenn. 2010)) (internal citations omitted). To that end, the Act confers jurisdiction on Tennessee courts to enforce agreements to arbitrate and “to enter judgment on an award thereunder.” Tenn. Code Ann. § 29-5-302(b).

Arbitration agreements in private contracts are favored; therefore, “the courts ‘play only a limited role in reviewing the decisions of arbitrators.’” *Morgan Keegan & Co.*, 401 S.W.3d at 603 (quoting *Arnold*, 914 S.W.2d at 448). The goal of arbitration “is to avoid what some feel to be the formalities, the delay, the expense and vexation of ordinary litigation.” *Arnold*, 914 S.W.2d at 449 (quoting *Boyd v. Davis*, 897 P.2d 1239, 1242 (Wash. 1995)). Parties who agree to submit their dispute to binding arbitration want to “to avoid the courts insofar as the resolution of the dispute is concerned.” *Id.* (quoting *Boyd*, 897 P.2d at 1242). For this reason, the Act prevents courts from considering “the merits of an arbitration award even if the parties allege that the award rests on errors of fact or misrepresentation of the contract.” *Id.* at 450. “To permit a dissatisfied party to set aside the arbitration award and to invoke the Court’s judgment upon the merits of the cause would render arbitration merely a step in the settlement of the dispute, instead of its final determination.” *Id.* at 452.

Tennessee Code Annotated, section 29-5-312 provides, “Upon application of a party, the court shall confirm an award, **unless, within the time limits hereinafter imposed, grounds are urged for vacating or modifying or correcting the award**, in which case the court shall proceed as provided in §§ 29-5-313 and 29-5-314.”² (Emphasis added). Therefore, the Act “permits the trial court to consider vacating, modifying, or

² Tennessee Code Annotated, section 29-5-317 provides that “an application to the court under this part shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions.” Typically, there are two ways in which a party presents reasons for vacating or modifying an award under the Uniform Arbitration Act: “(1) by filing a petition with the trial court to vacate the award; or (2) by raising reasons supporting vacation in an answer to the other party’s petition to confirm.” *Simon v. Teton Bd. of Realtors*, 4 P.3d 197, 202 (Wyo. 2000); see *Tarpley v. Searcy*, No. M2000-03094-COA-R3-CV, 2002 WL 870089, at *1 (Tenn. Ct. App. May 7, 2002) (One party filed an “action to confirm the award,” and the other party filed an answer requesting vacation of the award.)

correcting an arbitration award **only if grounds for doing so are submitted to the trial court ‘within the time limits ... imposed.’** *NHC Healthcare, Inc. v. Fisher*, No. M2007-02459-COA-R3-CV, 2008 WL 5424012, at *4 (Tenn. Ct. App. Dec. 30, 2008) (quoting *Arnold*, 914 S.W.2d at 448–49) (emphasis added). To further promote “a speedy and final determination,” *Arnold*, 914 S.W.2d at 452, **a party must assert his or her grounds for vacating or modifying the award “within ninety (90) days** after delivery of a copy of the award to the applicant.” Tenn. Code Ann. § 29-5-313(b) (applications to vacate); Tenn. Code Ann. § 29-5-314(a) (applications to modify) (emphasis added). Otherwise, the court is mandated to confirm the award upon application of a party. Tenn. Code Ann. § 29-5-312.

We find it significant that the statutory scheme not only requires the filing of an application for relief within the 90-day limitation but the application must also state the grounds for such relief.³ *See id.* Additionally, the grounds for vacating an arbitration award are very distinct from the grounds for modifying an award. The grounds for vacating an arbitration award are limited to circumstances where, *inter alia*, the “award was procured by corruption, fraud, or other undue means,” or where there “was evident partiality by an arbitrator.” Tenn. Code Ann. § 29-5-313. Conversely, the grounds for modifying an award are limited to circumstances involving an “evident miscalculation of figures” or an award that “is imperfect in a matter of form, not affecting the merits of the controversy.” Tenn. Code Ann. § 29-5-314. Thus, the Act not only mandates the filing of an application within the specified time limits, it also mandates that the applicant timely state **the “grounds . . . urged for vacating or modifying or correcting the award.”** Tenn. Code Ann. § 29-5-312 (emphasis added).

The foregoing notwithstanding, Culpepper seeks relief from these mandatory requirements via the relation-back provision of Rule 15.03. However, Culpepper has not cited and we are unaware of any decisions in Tennessee or other state courts that directly address this issue. That said, Culpepper urges us to consider federal decisions applying Rule 15 of the Federal Rules of Civil Procedure to cases decided under the United States Arbitration Act (the “Federal Arbitration Act” or “FAA”) which is similar to the Act.

Some federal courts have applied Rule 15 to allow a party to amend a timely application to vacate an award to assert additional grounds for vacation, even if the party moved to amend the application outside of the three-month time limit imposed by the FAA. *See Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1382 (11th Cir. 1988); *see also Passa v. City of Columbus*, No. 2:03-CV-81, 2008 WL 687168, at *6–7 (S.D.

³ If the application to vacate the award is “predicated upon corruption, fraud or other undue means, it shall be made within ninety (90) days after such grounds are known or should have been known.” Tenn. Code Ann. § 29-5-313(b).

Ohio Mar. 11, 2008). Nevertheless, we are not persuaded by these decisions, because the language of Tenn. Code Ann. § 29-5-312 is materially different from the language found in the parallel provision in the FAA.

The FAA provides, in pertinent part, “**Notice** of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered.” 9 U.S.C.A. § 12 (emphasis added). However, Tenn. Code Ann. § 29-5-312 provides, “Upon application of a party, the court shall confirm an award, unless, **within the time limits hereinafter imposed, grounds are urged** for vacating or modifying or correcting the award[.]” (Emphasis added). This difference is significant, because “grounds” is more specific than “notice.” As such, § 312 mandates that a dissatisfied party assert all relevant grounds for modification or vacation within the 90-day time limit; whereas, the FAA merely requires notice of a motion to vacate or modify.

Two cases decided by the Idaho Supreme Court interpreting a provision that is virtually identical to Tenn. Code Ann. § 29-5-312 highlight the effects of § 312’s particular language. In *Driver v. SI Corporation*, a party filed a timely motion to vacate the arbitration award without asserting grounds. 80 P.3d 1024, 1026 (Idaho 2003). The party later filed a brief in support of its motion that specified the grounds for vacation; however, the brief was filed outside of the 90-day time limit imposed by Idaho’s Uniform Arbitration Act. *Id.* at 1029. The delay in asserting grounds was due to the fact that the transcript of the arbitration hearing did not become available until after the 90-day deadline. *Id.*

Resolution of the issue required the Idaho Supreme Court to construe I.C. § 7–911, *Driver*, 80 P.3d at 1029, which provides, “Upon application of a party, the court shall confirm an award, unless, within the time limits hereinafter imposed, grounds are urged for vacating or modifying or correcting the award[.]” The Idaho Supreme Court interpreted § 7–911 to mean that all grounds for vacation or modification of an arbitration award must be asserted within the time limits imposed by the statute and that a mere motion to vacate or modify the award filed within 90 days was insufficient. *Driver*, 80 P.3d at 1029. Therefore, the court ruled that the motion to vacate the arbitration award was untimely. *Id.*

The Idaho Supreme Court’s decision in *Bingham County Commission v. Interstate Electric Company*, 665 P.2d 1046 (Idaho 1983) is also instructive. In *Bingham*, Bingham County filed a timely application to vacate the arbitration award with one ground for vacation. *Id.* at 1048. Eleven months later, at the hearing on the motion to vacate, Bingham County orally asserted an additional ground for vacation, and the trial court considered the additional ground and vacated the award on that basis. *Id.* The Idaho Supreme Court reversed the trial court, determining that the “statutory time limitation is strictly construed and *must* be complied with before a court can vacate any award.” *Id.* at

1049 (emphasis in original). Thus, the court held that though the motion to vacate, itself, was timely, Bingham County could not assert additional grounds for vacation outside of the time limit imposed by the statute. *Id.*

Similar to the Idaho Supreme Court, the Massachusetts Supreme Judicial Court in applying a nearly identical provision in its General Law held that “***all challenges*** to an arbitrator’s award must be brought within the time frame specified by the statute” to promote “stability and finality of the arbitration process.” *Local 589, Amalgamated Transit Union v. Massachusetts Bay Transp. Authy.*, 491 N.E.2d 1053, 1057 (Mass. 1986). The relevant provision in the Massachusetts General Law provides, “Upon application of a party, the superior court shall confirm an award, unless within the time limits, hereinafter imposed grounds are urged for vacating, modifying or correcting the award, in which case the court shall proceed as provided in sections eleven and twelve.” G.L.c. 150C, § 10.

The plain language of Tenn. Code Ann. § 29-5-312 requires a dissatisfied party to specify every relevant ground for modifying or vacating an arbitration award within the time limits imposed by the Act. Considering that the Act’s purpose is to bring the arbitration process to a speedy and final conclusion, *Arnold*, 914 S.W.2d at 452, we agree with the reasoning of the Idaho and Massachusetts Supreme Courts that parties must strictly adhere to the 90-day time limit. *Driver*, 80 P.3d at 1029; *Massachusetts Bay Transp. Authy.*, 491 N.E.2d at 1057.

That said, Rule 15’s relation-back principle generally allows parties to avoid the effect of statutes of limitations when the original pleading was filed within the limitations period and the newly asserted claim arose out of the same conduct, transaction or occurrence set forth in the original pleading. Tenn. R. Civ. P. 15.03; *Hawk v. Chattanooga Orthopaedic Grp., P.C.*, 45 S.W.3d 24, 31 (Tenn. Ct. App. 2000). But the purpose of Rule 15’s relation-back principle is to ensure that cases are decided on their merits “and not on rigid technicalities.” *Floyd v. Rentrop*, 675 S.W.2d 165, 168 (Tenn. 1984) (quoting *Osborne Enterprises v. City of Chattanooga*, 561 S.W.2d 160, 163 (Tenn. Ct. App. 1977)). The primary objective of the Act, however, is to restrict the role of the courts to decide cases on the merits, prevent delay, and promote finality in the arbitration process. *Arnold*, 914 S.W.2d at 452. When the purposes of a statute and a rule of civil procedure are in conflict, the more specific statutory provision “will be given force and effect” over the more general rule of procedure. *Martin v. Lear Corp.*, 90 S.W.3d 626, 629–30 (Tenn. 2002) (quoting *Patterson v. Tennessee Dept. of Labor and Workforce Dev.*, 60 S.W.3d 60, 64 (Tenn. 2001)). Accordingly, the specific requirement of § 29-5-312, that all grounds for vacation or modification shall be asserted within the time limits imposed, must prevail over the more general rule of procedure in order to effectuate the

General Assembly's purpose in enacting the Tennessee Uniform Arbitration Act.⁴ Consequently, while Rule 15 is generally applicable in proceedings to confirm, modify, or vacate an arbitration award, *see* Tenn. R. Civ. P. 1, we construe the Act to limit its application in this particular circumstance.

It is undisputed that a copy of the final award in favor of Provectus was delivered to Culpepper on September 12, 2018. Therefore, Culpepper had 90 days from that date within which to make an application to vacate the award and to state the grounds for doing so. He did neither within 90 days. Considering the strict mandate of the Act that all grounds must be asserted within 90 days, we affirm the trial court's decision that the proposed amendment to Culpepper's answer would be futile.⁵

Therefore, we affirm the decision of the trial court to grant Provectus's motion for judgment on the pleadings confirming the arbitration award.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Peter R. Culpepper.

FRANK G. CLEMENT JR., P.J., M.S.

⁴ Similarly, the Colorado Supreme Court, in a decision discussing the application of the rules of civil procedure to the Uniform Arbitration Act, stated, "Once its provisions come into play, the [Uniform Arbitration Act] imposes a self-contained procedural apparatus, with provisions for challenging an arbitrator's exercise of power." *State Farm Mut. Auto. Ins. Co. v. Cabs, Inc.*, 751 P.2d 61, 64 (Colo. 1988).

⁵ The trial court implied in its decision that had Culpepper filed a timely application to vacate the award, Culpepper could have amended his pleading outside of the statutory time limit to assert additional grounds for vacation. We have determined, however, that a party cannot amend a pleading to assert additional grounds for vacation or modification outside of the time limits imposed by the Act. When a trial court reaches the correct result, we will affirm that decision even if we do so on a different basis. *See Hopkins v. Hopkins*, 572 S.W.2d 639, 641 (Tenn. 1978); *see also Arnold v. City of Chattanooga*, 19 S.W.3d 779, 789 (Tenn. Ct. App. 1999).

