

IN THE COURT OF APPEALS OF IOWA

No. 0-159 / 08-1928
Filed April 8, 2010

FIA CARD SERVICES,
Plaintiff-Appellee,

vs.

ALLAN RICHARDS,
Defendant-Appellant.

Appeal from the Iowa District Court for Tama County, Kristin L. Hibbs,
Judge.

Defendant appeals the district court ruling denying defendant's motion to vacate and confirming an arbitration award in favor of the plaintiff. **AFFIRMED.**

Allan Richards, Tama, pro se appellant.

Piper Lori Hughes of Litow Law Office, P.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

Defendant, Allan Richards, appeals from the district court ruling denying his motion to vacate and confirming an arbitration award in favor of plaintiff, FIA Card Services. We affirm.

I. BACKGROUND AND PROCEEDINGS. FIA, formerly known as MBNA, sought to collect money owed from Richards's alleged use of a credit card. FIA alleged that under the credit card agreement, disputes were to be resolved through binding arbitration. FIA submitted a claim for arbitration with the National Arbitration Forum. On April 2, 2007, an arbitrator issued a decision finding the parties had an enforceable agreement to arbitrate the dispute, and that Richards had received notice of the arbitration hearing. It found the evidence and law supported an award in FIA's favor in the amount of \$14,822.62.

On April 3, 2007, the arbitration decision was mailed to Richards at P.O. Box 1114, Montour, Iowa 50173. On July 31, 2007, FIA's attorney mailed a copy of the award to Richards at another address, 910 Washington Street, Tama, Iowa 52339. On October 26, 2007, FIA filed an application and motion requesting the district court confirm the arbitration award. The district court dismissed the application without prejudice, on April 10, 2008, finding there was no proof Richards received notice of the application and motion.

However, on April 3, 2008, Richards had been served with a copy of the application and motion to confirm the arbitration award. The process server, Linn County sheriff, noted in the return of service, that he pushed the documents under the door to Richard's office. The sheriff saw Richards through a window

but he refused to answer the door. The sheriff also indicated that he knew it was Richards because he had served him before and had seen Richards in the courthouse previously. On April 23, and 30, 2008, Richards filed motions to dismiss claiming FIA failed to personally serve him. On June 18, 2008, Richards filed several motions including a motion to vacate, modify, or correct the arbitration award. The application to confirm the award and Richards's motions came on for hearing before the district court on June 27, 2008. Neither Richards, nor anyone on his behalf, appeared.

The district court entered its ruling on July 31, 2008. It denied Richards's motion to dismiss and denied, without prejudice, FIA's motion to confirm the arbitration award because FIA had not provided evidence of an arbitration agreement. On August 8, 2008, FIA filed a motion to reconsider. It argued that the district court was required to confirm the award because all of Richards's challenges to the arbitration award were untimely. On September 25, 2008, the district court granted FIA's motion to reconsider and confirmed the award, finding Richards indeed did not make a timely filing to challenge the award. On October 10, 2008, Richards filed a motion to reconsider, urging that the court's original ruling was correct, and again claiming there was no arbitration agreement and he never received notice of the arbitration matters. The district court denied this motion on November 3, 2008, and entered judgment in favor of FIA in the amount of \$14,822.62 plus interest.

Richards filed a notice of appeal on December 2, 2008. Richards claims the district court's confirmation of the award was in error because, among other things, FIA provided no proof he received notice of the award.

II. STANDARD OF REVIEW. A party may appeal from an order confirming an arbitration award. Iowa Code § 679A.17(1)(c) (2007). Our review is for correction of errors at law. *Ales v. Anderson, Gabelmann, Lower & Whitlow*, P.C., 728 N.W.2d 832, 838-39 (Iowa 2007). However, the standard of our review of arbitration awards is very limited and confined to the grounds stated in Iowa Code sections 679A.12 and 679A.13. *Humphreys v. Joe Johnston Law Firm, P.C.*, 491 N.W.2d 513, 514-15 (Iowa 1992). So long as the provisions of sections 679A.12 and 679A.13 are not violated, we will not correct errors of law or fact. *Ales*, 728 N.W.2d at 839.

III. ANALYSIS. Our code provides,

Upon application of a party, the district court shall confirm an award, *unless within the time limits imposed under sections 679A.12 and 679A.13* grounds are urged for vacating, modifying, or correcting the award, in which case the district court shall proceed as provided in sections 679A.12 and 679A.13.

Iowa Code § 679A.11 (emphasis added). A party seeking to vacate the arbitration award must file in the district court an application to vacate “within ninety days after delivery of a copy of the award to the applicant.” *Id.* § 679A.12(3). If the party seeking to vacate alleges that the arbitration award is based on “corruption, fraud, or other illegal means,” the application must be filed “within ninety days after those grounds are known or should have been known.” *Id.* If a party seeks to have the award modified or corrected, an application

requesting this relief must be filed with the district court also “within ninety days after delivery of a copy of the award to the applicant.” *Id.* § 679A.13(1).

The arbitration award was issued on April 2, 2007. The award includes an “Acknowledgement and Certificate of Service” that states

This Award was duly entered and the Forum hereby certifies that pursuant to the Parties’ Arbitration Agreement, a copy of this Award was sent by first class mail postage prepaid to the Parties at the above referenced addresses or their Representatives on this date.

The case file includes a copy of a letter sent to Richards accompanying the award. This letter is dated April 3, 2007, and shows that it and the award were mailed to a P.O. Box address in Montour, Iowa. An attorney for FIA, Piper Lori Hughes, submitted an affidavit testifying that she also mailed a copy of the award to Richards on July 31, 2007, and submitted a copy of the letter she sent along with the award as an exhibit. The exhibit shows that this time the letter and award were mailed to 910 Washington Street in Tama, Iowa.

Richards generally states he did not receive prior notice of the arbitration proceedings. We find this somewhat suspect since the arbitrator’s award notes that two notices of arbitration were sent to Richards and Richards filed a response with the arbitration forum. But to determine whether Richards’s motion to vacate and modify was timely, we must determine when he received notice of the award, not when or whether he received other notices concerning the arbitration. Richards does not specifically deny receiving notice of the award. He generally denies receiving mail at the addresses listed above and denies

receiving mail at another address not involved in this case.¹ He does not provide an alternative address where he was receiving mail or residing to receive notice. He insists FIA should have to prove that the award was delivered through personal service by a process server.

We know of no requirement that notice of an arbitration award must be made through personal service. See *\$99 Down Payment, Inc. v. Garard*, 592 N.W.2d 691, 693 (Iowa 1999) (noting that the defendants received notice of the arbitration award by mail). Notice of an arbitration hearing may be made through personal service or by registered mail. See Iowa Code § 679A.5. Richards cites no authority to support a claim that the award must be personally served. We find the court did not err in finding Richards's motion to vacate, modify, or correct the arbitration award to be untimely. There is substantial evidence to support a finding that Richards received notice of the award in early April 2007, when it was mailed by the arbitrator, or later in early August 2007, when it was mailed by FIA's attorney. Under either scenario, Richards's motion was untimely as it was filed on June 18, 2008, well after the allotted ninety-day period to challenge the award.

Given our resolution on this issue, we need not consider other arguments of either party. We affirm the district court.

AFFIRMED.

¹ His motion to vacate asserts, "That the arbitrator's filing states that the defendant was provided information at 305 S. Main Street, Montour, Iowa by first class mail is not true, in that the defendant has never received first class mail at this address." FIA never sent documents to the Main Street address relating to this proceeding. Documents concerning another collection matter between FIA and Richards were sent to the Main Street address.