

IN THE COURT OF APPEALS OF IOWA

No. 8-252 / 07-1513
Filed May 29, 2008

FIA CARD SERVICES, N.A.,
f/k/a MBNA AMERICA BANK, N.A.,
Plaintiff-Appellant,

vs.

ALLAN RICHARDS,
Defendant-Appellee.

Appeal from the Iowa District Court for Tama County, Thomas L. Koehler,
Judge.

Plaintiff appeals the district court's decision granting defendant's motion to
vacate an arbitration award. **AFFIRMED.**

Charles L. Litow of Litow Law Office, P.C., Cedar Rapids, for appellant.

Allan M. Richards, Tama, appellee pro se.

Considered by Sackett, C.J., and Vogel, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BEEGHLY, S.J.**I. Background Facts & Proceedings**

On October 12, 2006, an arbitrator with the National Arbitration Forum entered an award against Allan Richards, and for MBNA America Bank, now FIA Card Services (FIA), for \$14,386.66. The Forum certified that it mailed notice of the award to Richards on October 13, 2006, at an address in Montour, Iowa.

On January 9, 2007, FIA filed an application to confirm the arbitration award in Iowa district court. Richards was personally served notice of the application on April 27, 2007, in Cedar Rapids. The district court denied Richards's pro se motion to dismiss for lack of personal service.

On June 29, 2007, Richards filed a motion to vacate, modify or correct.¹ The district court granted the motion to vacate on the following grounds raised in Richards's motion:

3. The arbitration was completed without service on the defendant, without due process of law, and without opportunity for the defendant to participate.

4. . . .

That in any matter in relation to the arbitrator, the defendant requested a participatory hearing, and no hearing was ever granted.

. . .

7. That the arbitrator's filing states that the defendant was provided information at an address that is not correct, by first class mail is not true, in that the defendant has never received first class mail at this address.

8. That even though the defendant asked for a participatory hearing, the arbitrator entered an order without defendant's participation.

¹ Richards also filed a counterclaim for breach of contract and harassment, but this was later voluntarily dismissed.

The court concluded Richards had been denied active participation in the arbitration process. FIA appealed the district court's decision.

II. Standard of Review

Richards's motion to vacate the award was made under Iowa Code section 679A.12 (2005), and such motions "shall be heard in the manner and upon the notice provided by law or rule of civil procedure, for the making and hearing of motions." Iowa Code § 679A.15; *Humphreys v. Joe Johnston Law Firm, P.C.*, 491 N.W.2d 513, 514 (Iowa 1992).

FIA appealed the district court's decision, as permitted by section 679A.17(1). "An appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action." Iowa Code § 679A.17(2). Therefore, our review of the district court's decision is for the correction of errors at law. Iowa R. App. P. 6.4; *\$99 Down Payment, Inc. v. Garard*, 592 N.W.2d 691, 693 (Iowa 1999).

III. Merits

"Iowa Code section 679A.11 clearly imposes a duty upon the district court to confirm an arbitration award upon application of a party unless a timely ground to vacate or correct the award has been filed." *\$99 Down Payment*, 592 N.W.2d at 694. The Code provides that if "grounds are *urged* for vacating, modifying or correcting the award, . . . the district court shall proceed as provided in sections 679A.12 and 679A.13." Iowa Code § 679A.11 (emphasis added). Once Richards raised, or "urged," grounds to vacate the arbitration award, there was no longer a presumption the award was valid. In other words, once grounds

were “urged” neither party could rest on their allegations, but they were required to present evidence in support of their respective positions.

FIA contends the district court erred in granting Richards’s motion to vacate because he did not adequately prove any of the grounds set forth in section 679A.12. FIA agrees that Richards set forth facially valid grounds for vacating the arbitration award, but asserts Richards did not present any evidence to support his allegations. Richards responds that FIA has not supported its claims on appeal.

Neither party filed an affidavit or statement of facts to support their position regarding the motion to vacate. The matter was set for a one-hour hearing on August 3, 2007, but the hearing was apparently not recorded and no transcript exists. No statement of the evidence or proceedings has been submitted, as permitted by Iowa Rule of Appellate Procedure 6.10(3). Thus, there is nothing for us to review, on the appellate level, to determine whether the district court’s decision was supported by substantial evidence.

An appellant has the duty to provide a record on appeal showing the alleged error in the district court’s ruling. *In re F.W.S.*, 698 N.W.2d 134, 135 (Iowa 2005). If a transcript is unavailable, the parties may prepare a statement of the evidence under rule 6.10(3). *In re T.V.*, 563 N.W.2d 612, 613 (Iowa 1997). Although a statement under rule 6.10(3) is not mandatory, “an appellant will not be entitled to a new trial or any other relief on appeal unless the appellant attempts to comply with the rule.” *Id.* at 614.

Without the benefit of a full record, it is improvident for a court to exercise appellate review. *F.W.S.*, 698 N.W.2d at 136. “[W]e will not speculate as to what took place or predicate error on such speculation.” *In re Marriage of Ricklefs*, 726 N.W.2d 359, 362 (Iowa 2007). When there is no record of the district court proceedings, we are left with nothing to review. See *Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005). Due to a lack of a proper record to review, we affirm the decision of the district court.

AFFIRMED.