

COA Opinion: Ex parte communication with an arbitrator does not necessitate vacating an arbitration award under the Domestic Relations Arbitration Act

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In May 2007, Salvatore moved to amend the trial court's award of spousal support or property award to his ex-wife Mary, or to make installment payments. The trial court referred the case to the Friend of the Court for an evidentiary hearing. However, the parties then agreed to submit to binding arbitration. In September 2008, the arbitrator's final award ordered Salvatore to pay Mary \$485,155, for Mary's interest in a company, in installments, without interest, and terminated his spousal support obligation effective May 2007. The arbitrator granted Salvatore credit for the spousal support that he had paid Mary between May 2007 and September 2008, and ordered that he would continue to pay \$5,500 a month until he paid the remaining \$391,655 to satisfy the award.

In December 2008, the trial court issued an order confirming the arbitrator's award and denied Mary's motions to vacate, modify, or correct the arbitration award. Salvatore filed a motion to reduce his monthly payments, and in June 2009 after a hearing on the matter, the trial court reduced his monthly payments to \$3,870 without modifying the total amount that was awarded. Mary appealed both orders. In [Cipriano v. Cipriano, Nos. 291377 and 292806](#), a *per curiam* opinion, the Court of Appeals affirmed the first order and reversed the second order. Even though Salvatore had ex parte communication with the arbitrator, the Court of Appeals determined that it did not violate the Domestic Relations Arbitration Act (DRAA) because it did not violate the procedures for the arbitration in Mary and Salvatore's arbitration agreement. Parties are required under the DRAA to sign an agreement for binding arbitration that delineates the powers and duties of the arbitrator. Unlike the required formality of courts, arbitration allows parties to determine the procedures of their proceeding. Despite the ex parte communication, the Court of Appeals held that the trial court did not err in confirming the arbitrator's award. The Court of Appeals reversed the second order because under MCR 3.602(K)(1), since there was no pending action between the parties, a complaint to modify the arbitration award must have been filed within 21 days (Salvatore filed his complaint several months after), and neither Salvatore nor the trial court referred any provisions in MCR 3.602(K)(2), the grounds for modification of an arbitration award, to justify modification.