

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONNY VOGEL, II, AN INDIVIDUAL;  
AND EZFI, INC., A CALIFORNIA  
CORPORATION,  
Appellants,  
vs.  
PARKWAY MANOR, INC., A NEVADA  
CORPORATION,  
Respondent.

No. 55434

**FILED**

**MAR 08 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Imboden*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to confirm in part and vacate in part an arbitration award, or in the alternative to modify and/or correct the award. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant EZFI, Inc., and respondent Parkway Manor, Inc., participated in binding arbitration to resolve a contract dispute. The arbitrator entered a decision in favor of EZFI, but not to the full extent of damages that EZFI sought. The parties were notified of the award on March 26, 2009, and appellant Ronny Vogel, II filed a proper person motion to vacate the award on June 18, 2009. According to Parkway Manor, it timely opposed the motion on July 2, 2009, arguing, among other things, that the motion was improper because Vogel lacked standing to bring it, as he was not a party to the arbitration and, because Vogel was not a licensed attorney, he was not permitted to file a motion on EZFI's behalf.

The district court denied the motion on September 4, 2009, finding that Vogel could not bring such a motion as a nonparty, see NRS 38.241(1) (allowing a party to an arbitral proceeding to file a motion to vacate an arbitration award), or on EZFI's behalf, see Sunde v. Contel of

California, 112 Nev. 541, 915 P.2d 298 (1996) (providing that a corporation cannot appear except through counsel, and nonlawyer principals are prohibited from representing a corporation).

On November 25, 2009, citing NRS 38.241 and 38.242, and common-law grounds, Vogel and EZFI, through counsel, filed a motion to confirm in part and vacate in part the March 26, 2009, arbitration award, or in the alternative to modify or correct the award, arguing that with regard to the damages portion of the decision, the arbitrator manifestly disregarded the law of contract interpretation and issued a decision influenced by perjury and unsupported by the agreement. According to Vogel and EZFI, because the district court did not confirm the award in its September 4 order, denying Vogel's motion to vacate or modify the award, "the court left the door open for EZFI to move to vacate the arbitration award." Parkway Manor opposed the motion, arguing, among other things, that it was untimely filed nearly eight months after entry of the arbitration award. The district court denied the motion as untimely, and this appeal followed.

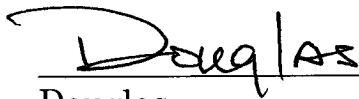
We review de novo a district court's legal conclusions, including matters of statutory interpretation. Douglas Disposal, Inc. v. Wee Haul, LLC, 123 Nev. 552, 557, 170 P.3d 508, 512 (2007). Having considered the parties' briefs and reviewed the appendix, we conclude that the district court properly denied appellants' motion. See NRS 38.241(2) (providing that a motion to vacate an arbitration award must be filed within 90 days after the movant receives notice of the award); NRS 38.242(1) (applying the same deadline to a motion to modify or correct an arbitration award).


Although appellants assert that the statutory deadlines set forth under the Uniform Arbitration Act, codified at NRS Chapter 38, should not apply to preclude the court from considering their common law-

based arguments for vacating, modifying, and/or correcting the award, appellants' argument is not consistent with policy reasons favoring arbitration. See Town of Bloomfield v. United Elec., 939 A.2d 561 (Conn. 2008) (holding that Connecticut's arbitration statute requiring that motions to vacate or modify an award be made within 30 days after notice of the award applies not only to motions arising out of the statutory grounds for vacatur, but also to common-law grounds, and reasoning that applying the 30-day time limitation to all motions to vacate furthered the legislative purpose of facilitating the expedient resolution of private disputes); Eurocapital Group, Ltd. v. Goldman Sachs, 17 S.W.3d 426, 431-32 (Tex. App. 2000) (rejecting as untimely a petition to vacate an arbitration award based on statutory and common-law grounds that was filed ten months after the award issued because the statute creating the right of action expressly limited to three months the time within which that petition could be brought, and reasoning that the statutory limitations period was substantive and that the longer residual four-year limitations period urged by appellants was "not consistent with even the common law rule that favors arbitration and indulges every reasonable presumption in favor of upholding an award"); see also, e.g., Florasynth, Inc. v. Pickholz, 750 F.2d 171, 175 (2d Cir. 1984) (holding, in the context of a Federal Arbitration Act matter, that a party may not move to vacate an arbitration award after the three-month deadline for doing so expires, and explaining that "there is no common law exception to the three month limitations period on the motion to vacate"); Dalal v. Goldman Sachs & Co., 541 F. Supp. 2d 72 (D.D.C. 2008) (rejecting appellant's argument that the Federal Arbitration Act's (FAA) three-month deadline for challenging an arbitration award should not apply because his claims did not rely exclusively on the FAA).

Accordingly, because the district court properly denied appellants' motion as untimely, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. James E. Wilson, District Judge  
Patrick O. King, Settlement Judge  
Rainey Legal Group, PLLC  
Holland & Hart LLP/Reno  
Carson City Clerk

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<sup>1</sup>Appellants assert that the district court's failure to confirm or vacate the arbitration award on Ronny Vogel, II's proper person motion to vacate the award should be treated as resetting the 90-day deadline for appellants to file a motion to vacate, correct, or modify the award. Appellants acknowledge that no authority mandates this result but contend that it is within the equitable powers of the court to do so. The district court, however, denied Vogel's motion as improper, and moreover, Vogel did not seek confirmation of the award. Additionally, appellants' argument regarding resetting the 90-day time limit is not consistent with the policy supporting arbitration as quick and affordable dispute resolution. See Wagner v. Stratton Oakmont, Inc., 83 F.3d 1046, 1050 (9th Cir. 1986) (recognizing arbitration as a speedy and efficient method of resolving disputes without consuming court time). Appellants also argue that the district court erred by failing to confirm the award when it denied as untimely their motion to confirm in part and vacate in part the arbitration award, but appellants only asked the court to confirm part of the award and to vacate the remainder of it, which the court declined to do. Accordingly, we conclude that appellants' arguments do not warrant reversal.