

STATE OF MICHIGAN
COURT OF APPEALS

GINA DARLENE BROWN,

Plaintiff-Appellee,

v

TITAN INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

July 24, 2014

No. 315119

Wayne Circuit Court

LC No. 10-008047-NF

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

In this no-fault action, defendant Titan Insurance Company appeals by right the circuit court's judgment granting plaintiff's motion to confirm the arbitration award that awarded plaintiff various personal protection insurance ("PIP") benefits. The court ordered defendant to pay plaintiff the full amount of the arbitration award, which was \$139,658.72. Defendant disputes plaintiff's entitlement to a portion of the PIP benefits, specifically two-thirds¹ of the combined replacement service and attendant-care expenses (\$57,040) that was granted by the arbitration award. We affirm.

I. BACKGROUND

The essential facts are largely undisputed by the parties. Plaintiff was riding as a passenger in the uninsured vehicle of her husband, Eddie Rodriguez ("Rodriguez"), when it was struck by another uninsured vehicle. Plaintiff suffered a traumatic brain injury and became fully disabled. Rodriguez provided replacement and attendant care services to plaintiff after the accident. Because neither of the drivers nor plaintiff had active no-fault insurance, plaintiff filed a claim with the Michigan Assigned Claims Facility, which assigned plaintiff's case to defendant.

Defendant purportedly failed to pay no-fault benefits to plaintiff in a timely fashion, so plaintiff filed the instant suit against defendant to recover those benefits. Because the parties

¹ Defendant concedes on appeal that plaintiff's attorney is entitled to the remaining one-third of the disputed expenses as attorney fees.

disputed the extent of plaintiff's injuries and medical expenses, the parties stipulated to resolving that matter through binding arbitration. The stipulation reserved only one issue of law for later determination by the court: "[W]hether or not no-fault penalty interest awarded pursuant to MCLA 500.3142(3) or no-fault attorney fees awarded pursuant to MCLA 500.3148(1) is assessable against Eddie Rodriguez pursuant to MCLA 500.3177." The arbitration panel ultimately awarded plaintiff a total of \$139,658.72, which was comprised of the following amounts: (1) \$48,823.72 in medical expenses; (2) \$5,000 in replacement services; (3) \$80,560 in attendant care expenses; (4) \$1,775 in mileage expenses; and (5) \$3,500 in probate fees.

Plaintiff moved to confirm the arbitration award. Plaintiff claimed that she, rather than Rodriguez, was entitled to the full award because she was the injured party. Plaintiff noted that, in the unconsolidated but related case between defendant and Rodriguez, the court had refused to place the disputed PIP benefits into escrow based on its determination that plaintiff, and not Rodriguez, was entitled to the disputed PIP benefits.² Defendant asserted that it should be allowed to offset the replacement and attendant-care service payments because: (1) it had a statutory right to seek full reimbursement from Rodriguez; (2) Rodriguez was the only person entitled to the payments because he provided those services to plaintiff; and therefore (3) defendant would be ultimately entitled to receive any payments that it issued to Rodriguez. After a hearing, the court entered judgment confirming the full arbitration award in favor of plaintiff, holding that all rights in the benefits, including attendant-care and replacement services, belonged to plaintiff rather than Rodriguez or defendant. This appeal followed.

II. STANDARD OF REVIEW

This issue presents questions of law, including the interpretation of statutes, which are reviewed de novo by this Court. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010). In addition, defendant's appeal essentially begs this Court to modify the arbitration award, as it would be impossible to grant defendant its requested relief without doing so. This Court reviews de novo the trial court's decision to confirm, modify, or vacate an arbitration award. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003). Judicial review of an arbitration award is very limited. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009).

III. MODIFYING THE ARBITRATION AWARD

When a party challenges an arbitration award, the court has three options: (1) confirm the award; (2) vacate it if fraudulently or illegally obtained; or (3) modify to "correct errors that are apparent on the face of the award." *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001). Because defendant essentially asks us to alter the terms of the award, we must examine whether the trial court erred by refusing to modify the award when it entered judgment for plaintiff.

² Curiously, the parties did not join these actions into a single case.

The court may only modify an arbitration award if: (1) the arbitrator made an obvious miscalculation or mistake as to the persons or property described in the award; (2) the award pertained to a matter that was not presented to the arbitrator and the award modification would not affect the merits of the arbitrator's decisions on the issues presented; or (3) the form of the award was flawed, but the flaw did not affect the merits of the case. MCR 3.602(K)(2). Furthermore, the court shall vacate an arbitration award when the arbitrators have exceeded the scope of their authority. MCR 3.602(J)(2)(c). Arbitrators exceed their authority when they "act beyond the material terms of the contract from which they draw their authority or in contravention of controlling law." *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005); see also *DAIIE v Gavin*, 416 Mich 407, 433-434; 331 NW2d 418 (1982). Arbitrators may also exceed the scope of their authority—thus warranting judicial intervention—by committing substantial, prejudicial errors of law. *Gavin*, 416 Mich at 435. However, an arbitrator's factual findings are not subject to judicial review. *Krist*, 246 Mich App at 67.

Because plaintiff moved to confirm the arbitration award, the court's role was simply to confirm, vacate, or modify the award. The arbitration award specifically stated that, *in plaintiff's lawsuit against defendant*, the "case proceeded to arbitration on this date and the arbitrators rendered the following unanimous award" The award then listed the specific categories of expenses—medical, replacement, attendant-care, mileage, and probate fees—that comprised the award. It also stated that it was "inclusive of all costs, interest, liens and attorney fees." Although defendant baldly asserts that plaintiff was aware that the parties would return and dispute which party was entitled to each portion of the award, this contention is unsupported by the record because neither the stipulated order for binding arbitration, nor the arbitration award, mentions any such reservations.

When the arbitration award is read as a whole, it is clear that the arbitration panel awarded the disputed PIP benefits exclusively to plaintiff, and not to defendant or Rodriguez. The arbitrators could have declared that they were only deciding the amounts of damages subject to disbursement, or were withholding decision on certain questions, but they did not do so. Instead, the panel specifically stated that it was giving a unanimous award and named plaintiff.

Defendant has not shown that the arbitrators obviously miscalculated or mistook the persons or property addressed in the award. The form of the arbitration award does not appear to be flawed or inadequate. The parties stipulated to binding arbitration on all but one issue of law that is irrelevant to this appeal. By necessity, the stipulated order sent all remaining issues to arbitration. The arbitration panel did not exceed the scope of its authority by deciding that plaintiff was entitled to the disputed PIP benefits. And, even if we agreed with defendant that *Cooper v Jenkins*, 282 Mich App 486, 487; 766 NW2d 671 (2009), was wrongly decided, this would not change the outcome of this appeal. Defendant has not established that the arbitrators' conclusion was an obvious, substantial legal error that was made in manifest disregard of the law. Nor has defendant shown that the arbitration award was subject to vacation under MCR 3.602(J)(2), or modification or correction under MCR 3.602(K)(2). In the absence of such a showing, the trial court lacked the authority to modify the arbitration award. The trial court did not err by confirming the arbitration award, which granted all the PIP benefits to plaintiff.

Affirmed. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio