

STATE OF MICHIGAN
COURT OF APPEALS

CLAILA BACHI, FIRAS BACHI, and LAITH
BACHI,

UNPUBLISHED
November 12, 1999

Plaintiffs-Counter Defendants-
Appellees,

v

No. 207705
Wayne Circuit Court
LC No. 96 607146 CK

FARM BUREAU GENERAL INSURANCE,

Defendant-Counter Plaintiff-Appellant.

Before: Cavanagh, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order entering judgment on an arbitration award in favor of plaintiffs. We affirm.

Defendant first argues that the trial court erred in dismissing its counter-complaint with prejudice. However, the trial court did not dismiss the counter-complaint on its own motion. In response to defendant's motion to set aside the judgment, plaintiffs filed a brief in which they requested the court to dismiss defendant's counter-complaint pursuant to MCR 2.116(C)(7) because a previous judgment had already been rendered on the merits.

Defendant also contends that the trial court erred in dismissing its counter-complaint on the basis that the arbitration panel had already found in favor of plaintiffs on the issue of coverage. We find no error requiring reversal. Defendant asserts that because the arbitration provision in the policy refers only to uninsured motorist benefits, defendant's other claims were not subject to arbitration. However, unlike the cases on which defendant relies, *DAIIE v Gavin*, 416 Mich 407; 331 NW2d 418 (1982), and *Beattie v Autostyle Plastics, Inc*, 217 Mich App 572; 552 NW2d 181 (1996), there was no explicit language in defendant's policy addressing the disputed issue.

Moreover, at the arbitration hearing, defendant did not challenge the arbitrators' jurisdiction to rule on the coverage issue; in fact, defendant contended that plaintiffs were not entitled to coverage because of their fraud and presented evidence in support of its argument. Only after the panel decided

in favor of plaintiffs did defendant raise a question regarding the panel's jurisdiction over the issue. Because defendant proceeded without challenging the arbitrability of the coverage issue, defendant submitted it to the arbitrators for decision. Defendant "may not now challenge the unfavorable award in court by complaining, for the first time, that the issue decided was excluded from arbitration." *American Motorists Ins Co v Llanes*, 396 Mich 113, 114; 240 NW2d 203 (1976).

Finally, defendant asserts that the arbitration panel did not rule on the merits of the coverage issue because the award did not include an explicit finding on it. However, defendant has failed to address the merits of this issue; accordingly, we deem it abandoned. See *Prince v MacDonald*, ____ Mich App ____, ____; ____ NW2d ____ (Docket No. 204615, issued 8/13/99), slip op p 6.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell