

STATE OF MICHIGAN
COURT OF APPEALS

THUMB ELECTRIC COOPERATIVE OF
MICHIGAN,

Plaintiff-Appellee,

v

ROBERT C. WALKER and WILLIAM C.
WALKER,

Defendants-Appellants.

UNPUBLISHED
September 28, 2004

No. 247523
Sanilac Circuit Court
LC No. 00-027379-CZ

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendants appeal as of right the circuit court's order denying their motion for post-judgment interest on an arbitration award. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants filed suit against plaintiff alleging that stray voltage caused damage to their dairy cattle in the form of decreased milk production. The parties submitted the matter to arbitration. An arbitration panel issued an award in favor of defendants in the amount of \$350,000 but did not grant interest on the award, notwithstanding the fact that the parties' arbitration agreement authorized the panel to award pre-judgment interest from the date of the filing of the complaint if it deemed an award of interest to be appropriate. The circuit court confirmed the award but modified it to include interest from the date of the filing of the complaint until the date of the entry of the award. MCL 600.6013(6).

In *Thumb Electric Coop v Walker*, unpublished opinion per curiam of the Court of Appeals, issued December 6, 2002 (Docket No. 230804), another panel of this Court affirmed the circuit court's decision in part and reversed it in part. The *Thumb* Court found that the parties' arbitration agreement did not manifest an intent to make an award enforceable by a circuit court, but affirmed the circuit court's confirmation of the award on the basis that it was not invalid under common law arbitration principles. The *Thumb* Court reversed the circuit court's award of interest, concluding that the parties relinquished their rights to the benefits of MCL 600.6013 when they agreed to submit the matter to binding arbitration, and that the parties' agreement did not manifest an intent that the circuit court award interest on a judgment pursuant to MCL 600.6013. *Id.*, slip op at 5-6.

On remand, defendants filed a motion seeking post-judgment interest from the date of the arbitration award until the date of entry of the circuit court judgment affirming the award. MCL 438.7. The circuit court denied the motion.

The law of the case doctrine provides that an appellate ruling on a particular issue binds the appellate court and all lower tribunals with regard to that issue. A question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case. *Reeves v Cincinnati, Inc (After Remand)*, 208 Mich App 556, 559; 528 NW2d 787 (1995). The doctrine applies to questions specifically decided in an earlier decision and to questions necessarily determined to arrive at that decision. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 209; 568 NW2d 378 (1997). Whether the law of the case doctrine applies is a question of law subject to de novo review. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

An agreement to arbitrate that does not provide for entry of a judgment on the award by a circuit court is not a statutory arbitration, but rather is governed by common law principles. In a common law arbitration, the jurisdiction of the arbitrator is determined by the parties' contract. *Beattie v Autostyle Plastics, Inc*, 217 Mich App 572, 577-578; 552 NW2d 181 (1996).

Defendants argue that the trial court erred by failing to award post-judgment interest. We disagree and affirm. Defendants' position is that they are entitled to interest on the arbitration award from the date of the award until the date it was paid, notwithstanding the fact that the arbitration panel did not provide for an award of interest. The *Thumb* Court held that because the parties' arbitration agreement provided for an award of interest at the discretion of the panel, and because the panel did not award interest, defendants were not entitled to interest. *Thumb Electric Coop*, slip op at 5. The cases relied on by defendants, including *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488; 475 NW2d 704 (1991), for the proposition that post-judgment interest on an arbitration award is required under MCL 438.7 notwithstanding the contents of the parties' agreement or the content of the actual award, is misplaced. In those cases, the payment of interest was contemplated by the parties to the arbitration agreements. The *Thumb* Court held that because the arbitration panel did not award interest, the circuit court was without jurisdiction to do so. *Thumb Electric Coop*, slip op at 4. This constitutes the law of the case. *Reeves, supra*; *Webb, supra*. Defendants are not entitled to an award of interest pursuant to MCL 438.7.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood