STATE OF MICHIGAN

COURT OF APPEALS

JACQUELINE GONZALEZ,

Plaintiff-Appellee,

v

ECOPRO RECYCLING, INC.,

Defendant,

and

PETER ADZEMA,

Defendant-Appellant.

UNPUBLISHED
April 22, 2010

No. 285376
Wayne Circuit Court
LC No. 04-433031-NO

Before: BANDSTRA, P.J., and BORRELLO and SHAPIRO, JJ.

PER CURIAM.

Defendant Adzema appeals of right the trial court's judgment entered on an arbitration award. We affirm.

Plaintiff sued Adzema and Ecopro for negligence in Wayne Circuit Court after she was injured while performing her duties as an employee at the Ecopro recycling facility in Detroit. Adzema was the sole shareholder and president of Ecopro at the time. The parties agree that plaintiff's injuries were work-related and should have been covered by worker's compensation insurance; however, Ecopro was not insured at the time of plaintiff's injuries. Plaintiff sued both Ecopro and Adzema under MCL 418.641(2) of the Worker's Disability Compensation Act, which allows an injured employee to sue her employer in a civil action when the employer failed to provide worker's compensation insurance under the Act. The parties stipulated to dismiss the suit and have the claim settled by statutory arbitration, and the arbitrator awarded plaintiff $210,000 against both Ecopro and Adzema. On plaintiff's motion, the trial court entered the arbitration award as a judgment against Ecopro and Adzema. Adzema challenges the arbitration award and the trial court's entry of judgment.[1]

[1] Ecopro is not a party to this appeal.

Adzema first claims that the trial court, and therefore the arbitrator, lacked subject matter jurisdiction to determine that he was plaintiff's employer. Adzema alleges that, as a shareholder of Ecopro, he is not plaintiff's employer, and that only a worker's compensation magistrate with authority under the Worker's Disability Compensation Act has jurisdiction to determine his employer status. We disagree. This issue has been settled by the Michigan Supreme Court in *Sewell v Clearing Machine Corp*, 419 Mich 56, 57-58; 347 NW2d 447 (1984), in which the Supreme Court held that the circuit courts of this state have concurrent jurisdiction under the Act to decide preliminary issues, such as the employer status of a litigant. While the Supreme Court called its reasoning into question in *Reed v Yackell*, 473 Mich 520, 538-539; 703 NW2d 1 (2005), it did not overrule it. Thus, Adzema's jurisdictional claim fails. Further, given that plaintiff's employer failed to purchase worker's compensation insurance, its assertion that the circuit court lacked jurisdiction is counter to MCL 418.641(2).

Adzema next claims that the arbitrator exceeded his authority by acting beyond the scope of the arbitration agreement and by issuing an award that was contrary to statutory and procedural law. We review de novo whether an arbitrator has exceeded his authority. *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005). Our review is limited to errors of law that are apparent on the face of the award or that go beyond the terms of the arbitration agreement from which the arbitrator derives its power. *Dohanyos v Detrex Corp*, 217 Mich App 171, 175-176; 550 NW2d 608 (1996).

There is nothing on the face of the arbitration award that is apparently erroneous. The award, in its entirety, states:

> I, the undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into between the above named parties and dated May 3, 2007, and having duly heard the proofs, evidence, and applicable law of the Parties, do hereby find in favor of Jacqueline Gonzalez and award the amount of $210,000.00 as damages against Ecopro Recycling, Inc. and Peter Adzema inclusive of cost, interest, and attorney fees.

Adzema argues that the arbitration award was contrary to the law because the arbitrator lacked jurisdiction over defendant. However, under *Sewell*, 419 Mich at 58, Adzema's claim that only the Worker's Compensation Agency has jurisdiction to decide his employer status is without merit. The parties agreed to have the arbitrator decide the issues of this case, and one of those issues was whether Adzema was plaintiff's employer. The arbitrator necessarily found that Adzema was plaintiff's employer, as the arbitrator issued the award against Adzema individually. There is nothing on the face of the award to suggest that the arbitrator ruled against Adzema for any reason other than what was alleged in the complaint: that he was plaintiff's employer, that he failed to provide worker's compensation insurance, and that he was negligent. Because the arbitrator necessarily found that Adzema was plaintiff's employer, and because MCL 418.641(2) specifically authorizes an injured employee to sue an employer in tort when that employer fails to provide worker's compensation insurance, the arbitration award against Adzema was pursuant to, not contrary to, the applicable law.

Adzema also alleges that the arbitrator acted contrary to the terms of the arbitration agreement when he granted plaintiff an award against Adzema. However, his assertion is actually that the arbitrator acted contrary to the arbitration agreement because he failed to follow

the applicable law. There is nothing on the face of the award to suggest that the arbitrator failed to follow the law, and because Adzema's allegation is that the arbitrator exceeded his authority under the arbitration agreement by failing to follow the law, the claim that the arbitrator acted beyond the grant of authority of the arbitration agreement is also without merit.

Adzema's final claim is that the circuit court erred by entering the arbitration agreement as a judgment against him. Under statutory arbitration and MCR 3.602, a trial court may only confirm an arbitration award, vacate the award if it was obtained through fraud, duress, or undue means, or modify or correct errors in the award that are apparent on its face. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). As there is nothing apparently erroneous on the face of the award, and there is nothing to suggest that the award was obtained through fraud, duress, or undue means, there are no grounds on which the trial court was required to correct or vacate the award. The trial court did not err in entering the arbitration award as a judgment against Adzema.

Further, we reject that the trial court erred in granting plaintiff's motion to enter judgment while Adzema's motion to vacate the award was pending. Adzema provides no authority to support his assertion and we are aware of none. In any event, Adzema had the opportunity to argue his motion to vacate the entry of judgment and the trial court denied it.

Affirmed.

/s/ Richard A. Bandstra
/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro