STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1344

Kirk Gjevre,
Appellant,

vs.

State Farm Mutual Automobile Insurance Company,
Respondent.

Filed March 5, 2012
Affirmed
Stoneburner, Judge

Ramsey County District Court
File No. 62CV1011574

Scott A. Teplinsky, Kristen R. Rice, Katz, Manka, Teplinsky, Graves & Sobol, Ltd., Minneapolis, Minnesota (for appellant)

David J. Hoekstra, Brett W. Olander & Associates, St. Paul, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Cleary, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant, who was injured in a work-related automobile accident, challenges the district court's order vacating a no-fault arbitration award for chiropractic treatments. Appellant argues that the district court erred by concluding that appellant's agreement with the workers'compensation carrier to not submit workers' compensation claims for

those chiropractic treatments defeated respondent's no-fault insurer's reimbursement rights, thereby precluding appellant from recovering no-fault benefits for those treatments under *Am. Family Ins. Group v. Udermann*, 631 N.W.2d 424 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2001). Because we conclude that the district court did not err in holding that appellant's agreement with the workers' compensation carrier precludes his recovery of no-fault benefits for chiropractic treatments arising out of the accident, we affirm.

FACTS

Appellant Kirk Gjevre was injured in a work-related automobile accident in early 2009. Gjevre began chiropractic treatments shortly after the accident and filed a claim for workers' compensation. The claim was denied, and Gjevre filed a claim petition with the Workers' Compensation Division in April 2009.

While the workers' compensation claim was pending, Gjevre submitted his medical and chiropractic bills to his automobile insurer, respondent State Farm Mutual Automobile Insurance. State Farm initially paid the claims, and intervened in the workers' compensation action. Based on the results of an adverse medical examination concluding that Gjevre had returned to "pre-injury status" and no longer required treatment for the accident, State Farm stopped paying no-fault benefits on July 30, 2009. Gjevre requested arbitration on his no-fault claims.

Before arbitration on the no-fault claims occurred, Gjevre and a State Farm claim representative attended a settlement conference with Gjevre's employer and representatives of the workers' compensation carrier. At the settlement conference, the

workers' compensation carrier offered to reimburse State Farm for medical benefits paid to the date of the conference but stated that it would deny all future chiropractic benefits under the "treatment parameters" contained in Minn. R. 5221.6200, subp. 3(A) (2009), which establishes a standard limit of 12 weeks of compensable treatment. Gjevre, the employer and the workers' compensation carrier then agreed to the terms of an "Order of Agreement" (agreement) to be submitted to the workers' compensation judge. The agreement provides, in relevant part, that the workers' compensation carrier will fully satisfy State Farm's intervention interest, Gjevre will withdraw the claim petition, and

> [b]ased upon the applicable Treatment Parameters and case law, [Gjevre] agrees that he will not submit any additional and/or future chiropractic bills to the workers' compensation carrier for payment related to the claimed injury.

A workers' compensation judge signed the agreement on October 19, 2010.

At the no-fault arbitration hearing in November 2010, State Farm argued that Gjevre's no-fault claims for chiropractic treatment that occurred after the agreement are barred by the agreement, and Gjevre argued that the agreement made no-fault insurance his exclusive remedy for payment of his chiropractic expenses. The arbitrator issued an award in Gjevre's favor. State Farm brought a motion in district court to vacate the award. The district court granted the motion, concluding that Gjevre's no-fault claims are barred under *Udermann*, 631 N.W.2d at 424, because the agreement defeats State Farm's reimbursement rights. This appeal followed.

D E C I S I O N

I. Standard of review.

Under Minnesota's No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41–.71 (2010), an arbitrator has authority to find facts and apply the law to those facts in awarding, suspending, or denying no-fault benefits. *Gilder v. Auto-Owners Ins. Co.*, 659 N.W.2d 804, 806 (Minn. App. 2003). The arbitrator's findings of fact are final. *Barneson v. W. Nat'l Mut. Ins. Co.*, 486 N.W.2d 176, 177 (Minn. App. 1992). When applying the law to the facts, however, the arbitrator has authority to decide a legal question, but such legal determinations are subject to de novo review by the district court. *Gilder*, 659 N.W.2d at 807. The party seeking to vacate an arbitration award "has the burden of proving the invalidity of the arbitration award." *Nat'l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984). When material facts are not in dispute, this court reviews the district court's application of law de novo. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007).

II. Workers' compensation coverage is primary

The workers' compensation act and the no-fault act "share the general policy of providing to injured persons medical and wage loss compensation quickly and efficiently." *Klinefelter v. Crum & Forster Ins. Co.*, 675 N.W.2d 330, 335 (Minn. App. 2004); *see also Raymond v. Allied Prop. & Cas. Ins. Co.*, 546 N.W.2d 766, 767 (Minn. App. 1996) (stating that these acts "constitute a harmonious and uniform system of law"), *review denied* (Minn. July 10, 1996). Workers' compensation benefits are primary but not exclusive. Minn. Stat. § 65B.61, subd. 1 (2010). The law requires, however, that an

injured worker seek benefits from a responsible workers' compensation insurer before looking to the no-fault insurer for benefits. *Id.* "[W]hen an employee receives benefits under both systems, the no-fault benefits are reduced by the amount of workers' compensation benefits paid." *Klinefelter*, 675 N.W.2d at 337. If workers' compensation benefits are not paid when no-fault benefits are due, the no-fault benefits must be paid without deduction, and the no-fault insurer has a right to reimbursement for benefits overpaid to avoid double recovery by the injured party. Minn. Stat. § 65B.54, subd. 3 (2010).

III. Effect of defeating no-fault insurer's reimbursement rights

In *Udermann*, we held that "because workers' compensation benefits are primary with respect to no-fault benefits and because [the employee-insured] entered into a settlement with the workers'[-]compensation carrier that compensated him for chiropractic expenses and defeated [the no-fault insurer's] reimbursement rights, [employee-insured] is precluded from recovering no-fault benefits for chiropractic expenses." 631 N.W. 2d at 427–28. We rejected Udermann's argument that the holding would discourage settlements, stating that "[t]he only settlements that will be discouraged are those that would undermine the priority system between workers' compensation and no-fault benefits expressly determined by the legislature." *Id.* at 428.

Gjevre argues that *Udermann* is not controlling in this case because Udermann, who had not received any chiropractic treatments at the time he settled his workers' compensation claims, specifically accepted payments "in full, final and complete settlement and satisfaction of any and all past, present and future claims, known or

unknown, related to his personal injury . . . for chiropractic benefits" under the workers' compensation act, but Gjevre only agreed not to submit workers' compensation claims for future chiropractic claims because, "based on the applicable treatment parameters and case law" the workers' compensation carrier was no longer obligated to cover his claims for chiropractic treatment. Although the agreement in this case is more like a covenant not to sue than a release, it is undisputed that the agreement precludes State Farm from seeking any reimbursement for post-agreement chiropractic claims from the workers compensation carrier. *See Colonial Ins. Co. of California v. Minnesota Assigned Risk Plan,* 457 N.W. 2d 209, 210-11 (Minn. App. 1990) (stating that no-fault insurer has no standing to pursue workers' compensation coverage on behalf of an injured employee who has not filed a workers' compensation claim), *review denied* (Minn. July 31, 1990).

But Gjevre claims that State Farm has primary responsibility for the outstanding bills because relieving the the workers' compensation carrier of any obligation to pay for future chiropractic treatments is "merely a redundant recitation" of Minn. R. 5221.6200, subp. 3(C), which establishes a standard limit of 12 weeks of chiropractic treatment. Gjevre states that the "crux of this case is that the benefits were not released, but instead, as mandated by the treatment parameters, were no longer the workers' compensation insurer's obligation to pay."

Gjevre's assertion that the workers' compensation carrier was no longer obligated to cover his claims for chiropractic treatment is flawed in two important respects: (1) the treatment parameters do not apply to his case and (2) the necessity for medical treatment rests in the discretion of workers' compensation judges, not workers' compensation

insurers, and "the treatment parameters for low back pain, provided Minn. R. 5221.6200, subp. 3 [do not] place absolute limits on the duration of treatment." *Jacka v. Coca-Cola Bottling Co.*, 580 N.W.2d 27, 33 (Minn. 1998).

A. Applicability of treatment parameters

The district court concluded that, because the workers' compensation carrier denied liability for the injury, the treatment parameters set out in Minn. R. 5221.6200 subp. 3(C) do not apply to Gjevre's claim. *See* Minn. R. 5221.6020, subp. 2 (stating that "[p]arts 5221.6010 to 5221.6600 do not apply to treatment of an injury after an insurer has denied liability for the injury").

Gjevre argues that "[b]y virtue of agreeing to make payments to and on . . . Gjevre's behalf [at the settlement conference] the workers[']compensation carrier was in effect admitting liability." This assertion, however, runs contrary to the legal principle that evidence of a settlement or offer to settle does not constitute an admission of liability. *See* Minn. R. Evid. 408 ("Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount."); *see also In re Buckmaster*, 755 N.W.2d 570, 580–81 (Minn. App. 2008) (stating that, although settlement evidence may be used for impeachment purposes, such evidence is "inadmissible to show liability."). We conclude that the district court did not err in concluding that, based on the denial of liability, the treatment parameters referred to in the agreement do not apply in this case.

B. Treatment-parameter rules are not absolute

In *Jacka*, the Minnesota Supreme Court, in response to certified questions from the chief administrative-law judge of the Office of Administrative Hearings, held, in relevant part, that the Minnesota Department of Labor and Industry did not exceed its statutory authority in promulgating treatment-parameter rule 5221.6200, subp. 3, because the "rules provide the compensation judge with the flexibility to extend medical treatment for as long as it is medically necessary and effective," and "allow the judge to depart from the parameters when appropriate." 580 N.W.2d at 33.

At oral argument on appeal, counsel for Gjevre argued that, in his opinion, none of the exceptions to the parameters apply to future chiropractic treatment for Gjevre. But we conclude that it is not possible that, when the agreement was made, Gjevre, his attorney or the workers' compensation carrier could foresee all of the circumstances under which Gjevre might seek additional chiropractic treatment. Under the rules, and as a practical matter, neither the workers' compensation carrier nor the injured employee can definitively determine when the treatment parameters will bar claims for treatment beyond the limits set out in the treatment parameters. Consequently, there is no merit in Gjevre's argument that, by agreement, he and the workers' compensation carrier can make a no-fault insurer "primary" for future treatments. Gjevre's argument that he did not intend to relinquish his right to pursue no-fault benefits by entering into the agreement and that he was not compensated for releasing his right to no-fault benefits may be relevant to the validity of the agreement, but is irrelevant to the effect of the agreement on State Farm's obligation to pay no-fault benefits for which Gjevre has

precluded reimbursement from workers' compensation. Because the agreement defeated State Farm's right to seek reimbursement, the district court correctly concluded that the agreement precludes Gjevre's recovery of future no-fault benefits for chiropractic treatments arising out of this accident.

Affirmed.