[J-158-98]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

JUDITH A. KNARR,	:	No. 0019 W.D. Appeal Docket 1998
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered July 3, 1997 at No.
	:	1748PGH1996 affirming in part and
v.	:	reversing and remanding in part the Order
	:	of the Court of Common Pleas of
	:	Cameron County, Civil Division entered
ERIE INSURANCE EXCHANGE,	:	August 6, 1996 at No. 95-5171.
	:	
Appellee	:	
	:	
	:	ARGUED: September 15, 1998
	:	
	:	

OPINION

MADAME JUSTICE NEWMAN DECIDED: JANUARY 25, 1999

Judith A. Knarr (Appellant) appeals from an Order of the Superior Court that reversed an Order of the Court of Common Pleas of Cameron County (trial court) granting Appellant's Petition to Vacate and/or Modify an Arbitration Award. Because the Superior Court exceeded its proper scope of review, we reverse.

FACTUAL AND PROCEDURAL HISTORY

On October 5, 1991, Appellant was injured in a collision with an uninsured motorist. Appellant commenced an action against Erie Insurance Exchange (Erie), and the case proceeded to arbitration. Following two hearings, the panel of Arbitrators awarded

Appellant a total of $110,305.00 for lost earnings and earning capacity and pain and suffering. However, the Arbitrators deducted from the award the sum of $58,587.20, which represented future social security disability benefits that Appellant would receive because of the accident. Thus, the Arbitrators' final award amounted to $51,617.80.

Both parties filed Petitions to Vacate and/or Modify the Arbitration Award. The trial court held that, pursuant to Browne v. Nationwide Insurance Company, 449 Pa. Super. 661, 674 A.2d 1127 (1996), alloc. denied, 545 Pa. 647, 682 A.2d 306 (1997), the Arbitrators erred in deducting the amount of Appellant's future social security disability benefits. Accordingly, the court modified the award to include that amount, raising the total award to $110,305.00. Erie appealed to the Superior Court.

In a Memorandum Opinion, the Superior Court reversed the Order of the trial court, holding that the Uniform Arbitration Act of 1980 (1980 Act), 42 Pa.C.S. §§ 7301-7320, and not the Uniform Arbitration Act of 1927 (1927 Act), Act of April 25, 1927, P.L. 381, No. 248, governed the trial court's scope of review. Pursuant to the 1927 Act, a trial court may "modify or correct the [arbitrators'] award where the award is contrary to law. . . ." See 42 Pa.C.S. § 7302(d)(2). The 1980 Act, however, removed the "contrary to law" grounds from the scope of the trial court's review. See 42 Pa.C.S. § 7314. Here, the trial court modified the Arbitrators' award on the ground that it was contrary to law, and the Superior Court concluded that in doing so, the trial court erroneously applied the broader scope of review of the 1927 Act instead of the more limited review permitted by the 1980 Act.

On appeal to this Court, Appellant argues, quite correctly, that the Superior Court itself exceeded its proper scope of review. At neither the trial court level nor the appellate court level did Erie argue that the provisions of the 1980 Act controlled the trial court's review of the arbitration award. To the contrary, in its Petition to Vacate and/or Modify the Arbitration Award, Erie specifically stated that the arbitration was conducted pursuant to the 1927 Act. Erie's failure to raise the issue of the applicability of the 1980 Act constituted a waiver of that issue. See Pa.R.A.P. 302(a); Winters v. Erie Insurance Group, 367 Pa. Super. 253, 532 A.2d 885 (1987); Pirches v. General Accident Insurance Company, 354 Pa. Super. 303, 511 A.2d 1349 (1986); Littlejohn v. Keystone Insurance Company, 353 Pa. Super. 63, 509 A.2d 334 (1986).

Notwithstanding Erie's waiver, the Superior Court sua sponte addressed the issue of whether the 1980 Act applied. This was clear error. We have held on numerous occasions that where the parties fail to preserve an issue for appeal, the Superior Court may not address the issue, even if the disposition of the trial court was fundamentally wrong. See, e.g., National Union Fire Insurance Company of Pittsburgh v. Gateway Motels, Inc., ___ Pa. ___, 710 A.2d 1127 (1998); Arthur v. Kuchar, 546 Pa. 12, 682 A.2d 1250 (1996); Rivera v. Philadelphia Theological Seminary, 510 Pa. 1, 507 A.2d 1 (1986); Wiegand v. Wiegand, 461 Pa. 482, 337 A.2d 256 (1975). Therefore, regardless of the

accuracy of the Superior Court's legal analysis, we are compelled to reverse the Order of the Superior Court and reinstate the Order of the trial court.[1]

Mr. Justice Nigro files a dissenting opinion.

[1] In its appeal to the Superior Court, Erie raised three issues: (1) whether the trial court erred in adding back to the arbitration award the amount of Appellant's future social security disability benefits; (2) whether the trial court erred in holding that Appellant was a resident of her parents' home for purposes of uninsured motorist coverage under her parents' policy with Erie; and (3) whether the trial court erred in holding that Appellant's injuries were caused by the October 5, 1991 motor vehicle accident. The Superior Court erroneously applied the provisions of the 1980 Act in addressing the three issues. Nevertheless, we decline to remand the residency and causation issues to the Superior Court for consideration pursuant to the provisions of the 1927 Act, because those issues are matters of pure fact, and therefore they are not reviewable pursuant to the "contrary to law" standard.