

STATE OF MICHIGAN
COURT OF APPEALS

VIKKI A. SIMPSON,

Plaintiff-Appellee,

v

MOBILE MEDICAL RESPONSE, INC.,

Defendant-Appellant.

UNPUBLISHED

January 27, 2009

No. 283128

Saginaw Circuit Court

LC No. 07-063837-PZ

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right from a circuit court order denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) (claim barred because of an agreement to arbitrate) and granting plaintiff's motion to compel arbitration. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in determining that the timeliness of plaintiff's demand for arbitration was a matter to be decided by the arbitrator, rather than the court. This is an issue of contract interpretation, *Amtower v William C Roney & Co (On Remand)*, 232 Mich App 226, 232-233; 590 NW2d 580 (1998), which is reviewed de novo as a matter of law. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

The parties' arbitration agreement required plaintiff to make a written demand for arbitration within 180 days of the date that the alleged claim arose and specified that failure to do so "shall result in a complete forfeiture of any right that I may have to arbitrate the claim(s) in dispute." We agree with defendant and the trial court that under the terms of this agreement, a timely written demand is a condition precedent to arbitration. However, the agreement does not specify that the determination of timeliness is to be decided by the court, rather than the arbitrator. As the trial court explained, the phrasing of a time limitation on filing a demand as a condition precedent does not overcome the presumption that the parties intended that the issue would be decided by the arbitrator. See *United Steelworkers of America v St Gobain Ceramics*

& Plastics, Inc, 505 F3d 417, 424 (CA 6, 2007); *Amtower, supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra