STATE OF MICHIGAN

COURT OF APPEALS

TERESA L. DUMONT, as Next Friend of JENI MARIE DUMONT, a Minor, Plaintiff-Appellee,	UNPUBLISHED November 30, 2010
v	No. 294121 Oakland Circuit Court
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellant.	LC No. 2005-070617-NF

Before: O'CONNELL, P.J., and BANDSTRA and MURRAY, JJ.

PER CURIAM.

Defendant State Farm Mutual Automobile Insurance Company appeals as of right the circuit court's order granting plaintiff Teresa Dumont's second renewed motion for entry of a judgment and for modification of the arbitration award. We reverse and remand.

I. FACTS

As one can glean from the introductory paragraph, this case involves a dispute resolved by an arbitration award. The case initiated when plaintiff sued defendant on a claim for personal protection insurance benefits for attendant care. Defendant had made payments for attendant care, but plaintiff claimed that defendant owed more for these services. The parties subsequently entered into a written agreement to arbitrate the claim for attendant care benefits, giving the arbitrator authority to decide the total amount of benefits due from the date of the accident (May 17, 2005) to the date of the arbitration hearing. The agreement also provided that a final judgment would be entered on the arbitration award.

At the time the arbitrator issued his award, he sent the parties a letter stating that the award was "predicated upon both [counsel] agreeing" at the arbitration hearing to 9,046 hours in attendant care being claimed during the relevant time period. Evidence was presented that before making his decision the arbitrator questioned the accuracy of the 9,046 hour figure, but the parties remained in agreement on that figure.

In the September 19, 2007, arbitration award, the arbitrator found that the hourly rate for attendant care was $19 and that, by multiplying the agreed upon hours expended (9,046) by the hourly rate ($19), and deducting the agreed upon amount already paid by defendant

($175,243.20), plaintiff was entitled to $14,630.80. Defendant paid that amount to plaintiff on October 1, 2007.

Plaintiff then filed a motion for entry of a judgment, ultimately asking the circuit court to modify the award by increasing the number of attendant hours expended during the relevant time period. In particular, plaintiff argued that the 9,046-hour figure was incorrect, and was based on a "calculation error." After hearing arguments, the trial court remanded the matter to the arbitrator "to determine the factual issues raised in the motion."

In response to the remand, the arbitrator filed a "corrected response" in which the arbitrator explained how he calculated the amount and indicated that he did not believe "there are any non-mathematical factual issues in dispute."

Plaintiff then renewed the motion for entry of judgment, and after argument on the motion, the court again sent the matter back to the arbitrator. In doing so, the court relied upon MCR 3.602(K)(2)(a)–the "evident miscalculation of figures" provision–and *Buys v Eberhardt*, 3 Mich 624 (1855). In response to this order, the arbitrator submitted another written response, again indicating that his calculations were accurate and based upon his findings and the parties' agreements. Additionally, the arbitrator informed the court that prior to issuing the award he had "questioned the number of accrued hours, which the arbitrator suspected may have been due to a miscalculation of figures by the plaintiff. The arbitrator based his award upon the number of hours claimed by plaintiff."

Returning to the trial court for a third time, the parties once again argued their positions. The trial court ruled that a "mutual mistake" or "calculation error" caused the arbitrator to utilize the 9,046 hour figure, as opposed to what plaintiff claimed should be 16,487.75 hours. On this basis, the trial court modified the award by substituting 16,487.75 hours in the place of the 9,046 hours. This, of course, resulted in a much larger figure that defendant now owed. This appeal ensued.

II. ANALYSIS

Defendant argues, not surprisingly, that the circuit court erred in modifying the arbitration award to correct the number of hours of attendant care being awarded to plaintiff. Generally, issues regarding enforcement, vacation, or modification of an arbitration award are reviewed de novo. *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, 282 Mich App 410, 415; 766 NW2d 874 (2009). Interpretations of court rules are questions of law, reviewed de novo on appeal. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006).

Michigan public policy favors arbitration to resolve disputes. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 128; 596 NW2d 208 (1999). Judicial review of an arbitration award is limited; a circuit court can modify an award to correct only certain errors apparent on the face of the award. MCR 3.602(K); *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991); *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174-175; 550 NW2d 608 (1996). Judicial review does not go to the merits of the arbitration award. *Id*. at 177-178.

Michigan courts construe court rules in the same way that we construe statutes. *Snyder v Advantage Health Physicians*, 281 Mich App 493, 501; 760 NW2d 834 (2008). We give effect to the rule maker's intent, as expressed in the court rule's terms, giving the words of the rule their plain and ordinary meaning. *Id*., citing *Kloian*, 273 Mich App at 458. If the language poses no ambiguity, this Court need not look outside the rule or construe it, but need only enforce the rule as written. *Kloian*, 273 Mich App at 458. This Court does not interpret a court rule in a way that renders any language surplusage. *Id.*

The circuit court modified the award based upon two principles, mutual mistake and an evident miscalculation of figures. Neither supports a modification in this case. First, MCR 3.602(K)(2)(a) provides, in relevant part, that, "the court shall modify or correct the award if: (a) there is *an evident miscalculation of figures* . . . ." (Emphasis added.) As the arbitrator found, and no one can contest, the arbitration award has no evident miscalculation of figures. Reading the arbitration award, the numbers utilized by the arbitrator add-up. Therefore, MCR 3.602(K)(2)(a) does not support modifying the arbitration award.

The real issue is whether, assuming a mutual mistake caused the use of the 9,046 figure as opposed to the 16,487.75 figure, that mutual mistake can serve as a basis to modify the award. Plaintiff argues that there was a mutual mistake, but she cites no domestic authority that a mutual mistake is proper grounds to modify an arbitration award. And although at oral argument before this Court plaintiff cited to *EE Tripp Excavating Contractor, Inc v Jackson County*, 60 Mich App 221; 230 NW2d 556 (1975), the Court's discussion of "mistake" as a ground to vacate an arbitration award was in its discussion of common law arbitration, *id*. at 251. This case involves statutory arbitration.

Quite simply, nothing within the court rule reflects the ability to modify an award based upon mutual mistake. See MCR 3.602(K)(2)(a)-(c). The court rule provides the sole means of vacating a statutory arbitration award, see MCL 600.5021 and *Jaguar Trading Ltd Partnership v Presler*, __ Mich App __, __; __ NW2d __ (2010), slip op at 3, and because it does not address mutual mistake as a basis to modify an award, the trial court erred in doing so in this case.[1]

Finally, we agree with defendant that the circuit court erred in failing to include in the judgment language limiting its duty of indemnification for care provided by doctors or hospitals, to compensation for services provided prior to the date of the arbitration award, as opposed to extending that time period up to the date of the judgment on the arbitration award.

Defendant sought to modify the arbitration award to make it conform to the arbitration agreement. The arbitration agreement provides that State Farm "will defend and indemnify [plaintiff] . . . as to any . . . medical provider's bills for medical care . . . rendered by any doctor, hospital, or third-party (non-family) provider *incurred prior to the arbitrator's final opinion*." The agreement to arbitrate also provides: "*The terms of this agreement shall be deemed to be a*

[1] In light of this conclusion, we need not decide whether the circuit court lacked jurisdiction because the motion was filed more than 91 days after the award. MCR 3.602(K)(2).

part of an incorporated into the Judgment entered by the Court in accordance with this agreement." (Emphasis added.)

MCR 3.602(K) provides for modification of an arbitration award where "(b) *the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted . . . .*" MCR 3.602(K)(2)(b). Subrule (K)(2)(b) is applicable here, because the parties did not submit to the arbitrator the issue of the time period in which State Farm would be obliged to defend and indemnify plaintiff for care rendered by a doctor or non-family provider. Rather, that issue was decided by the agreement to arbitrate, which was automatically incorporated into the judgment. Because the circuit court refused to modify a provision in the arbitration award that went beyond the issues submitted to the arbitrator, and because the award may be corrected without affecting the arbitrator's decision on the compensation for attendant care, the circuit court erred as a matter of law in striking the language proposed by State Farm from the judgment.

Reversed and remanded for entry of an order denying plaintiff's (second) renewed motion to modify the arbitration award, for inclusion of State Farm's proposed provisions regarding the time period for indemnification, for entry a judgment in plaintiff's favor in the amount consistent with the arbitration award, and, if necessary, for other proceedings consistent with this opinion. We do not retain jurisdiction.

No costs to be awarded to either party. MCR 7.219(A).

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Christopher M. Murray