This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0797

Progressive Preferred Insurance Company,
Appellant,

vs.

Christenson Electric, Inc.,
Respondent.

Filed February 7, 2022
Affirmed
Segal, Chief Judge

Ramsey County District Court
File No. 62-CV-20-5069

Michelle D. Hurley, Yost & Baill, LLP, Minneapolis, Minnesota (for appellant)

Rachel Beauchamp, Cousineau, Van Bergen, McNee & Malone, P.A., Minnetonka, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this no-fault insurance appeal, appellant-insurer challenges the district court's denial of appellant's motion to vacate several related arbitration awards. Appellant had sought indemnity from respondent, the owner of a Ford F250 truck involved in a collision, but the arbitration panel ruled that appellant was not entitled to seek indemnity because the

truck was a "passenger vehicle," not a "commercial vehicle," under the Minnesota No-Fault Insurance Act (the act), Minn. Stat. §§ 65B.41-.71 (2020). Appellant argues that the arbitration panel misapplied the vehicle definitions in the act and that the district court thus erred by denying the motion to vacate the arbitration awards. Because we discern no error in the application of the law, we affirm.

FACTS

In 2018, three vehicles were involved in a collision in Shakopee. A Ford F250 Super Duty four-door truck (the truck), driven by M.V. and owned by respondent Christenson Electric, Inc. (Christenson), rear-ended a car driven by M.M. Appellant Progressive Preferred Insurance Company was the insurer of M.M.'s car.[1] After the accident, Progressive paid no-fault benefits to M.M. and his two passengers. Progressive then brought claims, before a no-fault arbitration panel, against Christenson seeking indemnification for the no-fault benefits paid by Progressive.[2]

Christenson defended against the claims arguing, among other things, that the truck qualifies as a passenger vehicle and only commercial vehicles are subject to indemnity under the act. *See* Minn. Stat. § 65B.53, subd. 1. In support of its argument, Christenson submitted to the arbitration panel the vehicle specifications for the truck showing that the

[1] A third vehicle, a large truck, also hit M.M.'s car. The third vehicle is not involved in this appeal.

[2] Three claims were filed against Christenson, which is self-insured, one for each of the occupants of the vehicle insured by Progressive. The issues applicable to this appeal and determinations were identical for all three claims.

gross vehicle weight rating (GVWR) for the truck was "Class 2H: 9,001 – 10,000 [pounds]."

The arbitration panel determined that, while Christenson was "liable for this loss," Progressive was not entitled to indemnity because the GVWR of the truck did not exceed 10,000 pounds and that the truck thus did not qualify as a commercial vehicle for the purposes of obtaining indemnity under Minn. Stat. § 65B.53, subd. 1.

Progressive filed a motion in district court to vacate the arbitration awards, arguing that the arbitration panel exceeded its authority because it applied an erroneous interpretation of the act. The district court agreed with the arbitration panel's interpretation and denied the motion to vacate the awards. Progressive appeals.

DECISION

This appeal requires us to review the decision of a no-fault arbitration panel. Arbitrators in a no-fault proceeding under the act "are limited to deciding questions of fact, leaving the interpretation of law to the courts." *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000). This "departs from the generally accepted principle [in other kinds of arbitration] that 'arbitrators are the final judges of both law and fact.'" *Id.* (quoting *Johnson v. Am. Fam. Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988)). The supreme court has, however, recognized "that to grant relief, arbitrators must apply the law to the facts they have found." *Fernow v. Gould*, 835 N.W.2d 8, 11 (Minn. 2013) (quotation omitted). Findings of fact by an arbitrator are final, but we review an arbitrator's legal determinations de novo. *Id.*

Progressive claims that it is entitled to indemnity from Christenson under the provisions of the act for the no-fault benefits it paid to M.M. and his passengers. The act entitles an insurer to indemnity for no-fault benefits paid by the insurer when the vehicle responsible for the accident is a "commercial vehicle of more than 5,500 pounds curb weight."[3] Minn. Stat. § 65B.53, subd. 1. The parties agree that the truck's curb weight exceeds 5,500 pounds. That, however, is only the beginning of the analysis. Unfortunately, before we can answer the question of whether the truck constitutes a "commercial vehicle" subject to indemnity under the act, we must track through a series of definitions that tell us what is *not* a "commercial vehicle."

We begin this task with the definition of commercial vehicle in Minn. Stat. § 65B.43, subd. 12(b), of the act: "'Commercial vehicle' means: . . . any motor vehicle, other than a passenger vehicle defined in section 168.002, subdivision 24 . . . ." In turn, Minn. Stat. § 168.002, subd. 24(c)(1) (2020), provides, in relevant part, the following definition of passenger automobile:[4]

> "Passenger automobile" includes, but is not limited to:
>
> (1) a vehicle that is a pickup truck . . . as defined in subdivision[] 26 . . . .

[3] According to the record, "curb weight" refers to the weight of a vehicle, including fuel and other fluids but excluding cargo or passengers.

[4] The act refers to "passenger vehicle," but the definition referenced in Minn. Stat. § 65B.43, subd. 12(b), of the act is for a "passenger automobile." *Compare* Minn. Stat. § 65B.43, subd. 12(b) ("passenger vehicle") *with* Minn. Stat. § 168.002, subd. 24 ("passenger automobile"). The parties raised no concerns about this difference in wording and we will assume they are interchangeable for the purposes of our analysis.

This brings us to the third and final definition relevant to the analysis—the definition of "pickup truck" set out in Minn. Stat. § 168.002, subd. 26 (2020):

> "Pickup truck" means any truck with a manufacturer's nominal rated carrying capacity of three-fourths ton or less and commonly known as a pickup truck. If the manufacturer's nominal rated carrying capacity is not provided or cannot be determined, then the value specified by the manufacturer as the gross vehicle weight as indicated on the manufacturer's certification label must be less than 10,000 pounds.

The arbitration panel ruled here that "Progressive failed to prove that [the truck] is considered a commercial vehicle." The arbitration panel's decision is sparse and provides little to no explanation of its reasoning in reaching this conclusion. The arbitration panel, however, did state that the vehicle specifications submitted by Christenson "supports the vehicle is a class 2 GVWR" and, as such, the truck "does not qualify as a commercial vehicle" under the act.

The district court relied on this statement in its analysis of the arbitration decision. The district court noted that "Minn. Stat. § 168.002, subd. 2[6], states that when a manufacturer's nominal rated carrying capacity is not provided, the question of whether a truck qualifies as a commercial vehicle turns on whether its gross vehicle weight is less than 10,000 pounds." From that, the district court drew the logical conclusion, "that the arbitrators based their decision on the truck's weight rating [of 9,001 – 10,000 pounds]" in the vehicle specifications supplied by Christenson. The district court reasoned that "it is abundantly clear from the limited record in this case that the arbitrators based their decision on the truck's weight rating after determining that the parties had not submitted evidence

of its nominal rated carrying capacity."[5] The district court thus concluded that the arbitration panel was correct in finding that (1) the truck was a "pickup truck" under Minn. Stat. § 168.002, subd. 26; (2) it thus constituted a "passenger automobile" under Minn. Stat. § 168.002, subd. 24; and (3) it was thereby excluded from the definition of "commercial vehicle" in Minn. Stat. § 65B.43, subd. 12(b), of the act.

Progressive challenges the district court's conclusion, arguing that the arbitration panel and the district court misapplied the act because they ignored a phrase in the statutory definition of "pickup truck." Specifically, Progressive argues that, under the definition of "pickup truck" in Minn. Stat. § 168.002, subd. 26, it is only proper to rely on the GVWR when the "manufacturer's nominal rated carrying capacity is not provided *or cannot be determined*." (Emphasis added.) Progressive agreed at oral argument that no document showing the "manufacturer's nominal rated carrying capacity" was produced and, indeed, the parties appear to agree that manufacturers do not provide a "nominal rated carrying capacity" for pickup trucks. Progressive argues, however, that the "manufacturer's nominal rated carrying capacity" is a number that "can be determined" within the meaning of Minn. Stat. § 168.002, subd. 26, and, since it "can be determined," the arbitration panel erred by deciding that the truck was not a commercial vehicle based on the truck's GVWR.

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[5] We note that the vehicle specifications provided to the arbitration panel by Christenson simply stated "9,001 – 10,000" pounds. Presumably, this includes a GVWR of 10,000 pounds. The definition of "pickup truck" in Minn. Stat. § 168.002, subd. 26, specifies a GVWR of *less than* 10,000 pounds. Thus, theoretically, it could be argued that the truck may not qualify as a pickup truck because of the possibility that its GVWR is 10,000 pounds, and is not *less than* 10,000 pounds. Progressive, however, did not make that argument either to the district court or in this appeal. We point it out here only to note this de minimis discrepancy.

In support of its argument, Progressive points to an article from the website "auto.howstuffworks.com" explaining that "payload capacity" can be calculated by subtracting the gross vehicle weight rating from the curb weight. Progressive claims that this calculation constitutes a method for determining the "manufacturer's nominal rated carrying capacity." Progressive, however, missed a step in its proof—Progressive failed to provide any evidence that "payload capacity" and a "manufacturer's nominal rated carrying capacity" are the same. And we cannot just assume that these phrases can be used interchangeably as Progressive asks us to do. We must adhere to the rules of statutory interpretation.

Here, the statutory definition of "pickup truck" uses the phrase "nominal rated" as a modifier for "carrying capacity," but does not further define what is intended by that phrase. Without a definition in the statute, the rules of statutory interpretation require us to look to "common and approved usage" of words and phrases. Minn. Stat. § 645.08(1) (2020); *see also Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019). "[W]here the Legislature has not provided definitions of the relevant terms, we may consider dictionary definitions to determine a word's common usage." *Laymon v. Minn. Premier Props., LLC*, 913 N.W.2d 449, 453 (Minn. 2018). As Christenson notes in its argument, the word "nominal" is defined as "[e]xisting in name only; not real." *The American Heritage Dictionary of the English Language* 1197 (5th ed. 2018). The definition suggests that the phrase "manufacturer's nominal rated carrying capacity" is a designated value that may or may not correspond to actual carrying or "payload" capacity. As such, we must reject Progressive's argument that the "manufacturer's nominal rated

carrying capacity" is a number that "can be determined" by calculating the "payload capacity."

We therefore conclude that the district court did not err in denying the motion to vacate the arbitration decision.[6]

Affirmed.

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[6] We note that a related issue under the act was analyzed in the recently released precedential opinion of this court in *Am. Fam. Mut. Ins. Co. v. Progressive Direct Ins. Co.*, ___ N.W.2d ___ (Minn. App. Jan. 31, 2022). The *American Family* opinion addresses whether a pickup truck can qualify as a "passenger vehicle" under the act even if the parties agree that the truck's manufacturer's nominal rated carrying capacity exceeds the limit set out in Minn. Stat. § 168.002, subd. 26. Because the only issue asserted in this appeal is whether the nominal rated carrying capacity of the truck "can be determined" by subtracting the GVWR of the truck from its payload capacity, we have not analyzed the impact of the *American Family* decision on this appeal.