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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-178**

Flor Anorve Bernardino,
Respondent,

vs.

Allstate Insurance Company,
Appellant.

**Filed August 22, 2011
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-10-21652

Mark C. Vandelist, Vandelist & Vandelist, P.A., Lakeville, Minnesota (for respondent)

Richard S. Stempel, Steven P. Pope, Stempel & Doty, PLC, Hopkins, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant insurance company challenges the district court's confirmation of a no-fault arbitration award in favor of respondent-insured, contending that legal issues pending in an action between appellant and respondent's medical providers preclude confirmation of the arbitration award. Because no coverage issues relating to the

respondent-insured exist and the necessity of treatment and reasonableness of the treatment costs are factual issues within the arbitrator's jurisdiction, we affirm.

FACTS

On March 24, 2009, respondent Flor Anorve Bernadino¹ sustained injuries in a motor-vehicle accident. Bernadino received assistance from Linea Latina de Accidentes in obtaining medical treatment, including chiropractic care from Advanced Injury Specialists. Bernadino submitted a claim to appellant Allstate Insurance Company for no-fault medical-expense benefits. Allstate investigated the claim and ultimately denied payment of the bills from Advanced Injury Specialists. Bernadino filed a petition for no-fault arbitration, seeking recovery of medical-expense benefits in excess of \$8,000. Following a hearing, the arbitrator awarded Bernadino \$2,940.66.

On December 23, 2009, prior to the arbitration hearing, Allstate initiated an action against Bernadino's treatment providers in federal district court asserting claims of fraud, conspiracy, and other violations of law. The federal suit alleges that Linea Latina de Accidentes and Advanced Injury Specialists are engaged in systematic efforts to illegally solicit people involved in accidents and to bill their insurance carriers for unnecessary treatment or for services not actually rendered. Allstate seeks to void all billings from Advanced Injury Specialists and to obtain compensation for benefits already provided on behalf of Allstate insureds. Allstate did not assert any claims against Bernadino in the federal action.

¹ The case title incorporates the spelling of respondent's name from the district court's order. *See* Minn. R. Civ. App. P. 143.01. But she spells her name Bernadino in her brief, so we use that spelling in this opinion.

Allstate refused to pay the arbitration award in favor of Bernadino, citing the pending federal litigation, but did not move to vacate, modify, or correct the award. Bernadino moved the district court to confirm the award. Allstate argued that confirmation was inappropriate due to legal coverage issues pending in the federal court litigation. The district court confirmed the arbitration award, finding “no grounds for vacating, modifying or correcting the arbitration award” and emphasizing that Bernadino was not a party to the federal action. The district court also awarded Bernadino costs she incurred in connection with her motion to confirm, but denied Bernadino’s motion for sanctions. On appeal, Allstate challenges the district court’s confirmation of the arbitration award, and Bernadino requests sanctions against Allstate.

D E C I S I O N

Allstate challenges the district court’s confirmation of the arbitration award in favor of Bernadino. In a no-fault automobile insurance arbitration proceeding, an arbitrator’s factual findings are final, but we review questions of law de novo. *State Farm v. Liberty Mut. Ins. Co.*, 678 N.W.2d 719, 721 (Minn. App. 2004), *review denied* (Minn. June 29, 2004); *see also Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988) (stating that in the area of no-fault automobile insurance “arbitrators are limited to deciding issues of fact, leaving the interpretation of the law to the courts”).

No-fault arbitration procedure is governed by the provisions of Minn. Stat. §§ 572.10-.26 (2010). *See* Minn. R. No-Fault Arb. 38. An arbitration award is not legally binding until it is confirmed by the district court. *Murray v. Puls*, 690 N.W.2d 337, 342 (Minn. App. 2004). The district court “shall confirm an [arbitration] award,

unless . . . grounds are urged for vacating or modifying or correcting the award.” Minn. Stat. § 572.18. The district court may vacate an arbitration award if, among other grounds, the arbitrator exceeded his powers. Minn. Stat. § 572.19, subd. 1. A party seeking to vacate an arbitration award on this ground must file its application with the district court within 90 days of receiving the award. Minn. Stat. § 572.19, subd. 2.

Allstate admits that it did not bring a motion to vacate, modify, or correct the arbitration award, and it does not challenge the arbitrator’s determinations as to the necessity of the treatments Advanced Injury Specialists provided to Bernadino and the reasonableness of the charges. Rather, Allstate argues that legal coverage issues pending in the federal case make confirmation of the award inappropriate at this time.

We first address Bernadino’s argument that Allstate’s failure to bring a motion to vacate, modify, or correct the award within 90 days compels confirmation of the award. Under the plain language of the statute, the district court “shall confirm” an arbitration award unless a motion to vacate or correct the award is pending. Minn. Stat. § 572.18; *see also Component Sys., Inc. v. Murray Enter. of Minn., Inc.*, 300 Minn. 21, 25, 217 N.W.2d 514, 516 (1974) (holding that, when no motion to vacate was brought within 90 days of an arbitration award, the district court “was obliged to confirm the award”). The 90-day time limit contained in Minn. Stat. § 572.19, subd. 2, does not, by its terms, apply to requests to stay confirmation of an award. But we need not decide this procedural issue because we conclude that Allstate’s argument fails on its merits.

Allstate primarily relies on *Great W. Cas. Co. v. Kroning*, 511 N.W.2d 32, 35 (Minn. App. 1994), *review denied* (Minn. Mar. 15, 1994), to support its argument that an

arbitration award is not enforceable when coverage is disputed. In *Kroning*, the arbitrator determined that the insured was entitled to recover no-fault benefits for the value of in-home medical services provided by the insured's spouse and further ordered the insurer to pay for them. 511 N.W.2d at 34. We concluded that the arbitrator exceeded his authority because whether an insured is entitled to recover the value of medical treatment for which no expense was incurred presents a coverage issue, which "is for the court to determine, not the arbitrator." *Id.* at 35; *see also AMCO Ins. Co. v. Ashwood-Ames*, 534 N.W.2d 740, 741 (Minn. App. 1995) (holding that the "[d]enial of coverage" raises legal issues "for the court's determination and is beyond the scope of the arbitrator's factfinding authority"), *review denied* (Minn. Sept. 28, 1995). Allstate likens the fraud-related claims asserted in the federal action against Bernadino's medical providers to the "coverage issue" that was present in *Kroning*. We are not persuaded.

First, there is no legal issue here with respect to Bernadino's right to obtain no-fault benefits. Bernadino incurred medical expenses related to a motor-vehicle accident for which she was insured. In other words, the preconditions to coverage were met. *See* Minn. Stat. § 65B.46, subd. 1 (2010) (stating that "every person suffering loss from injury arising out of maintenance or use of a motor vehicle or as a result of being struck as a pedestrian by a motorcycle has a right to basic economic loss benefits"). The arbitrator decided fact issues that were wholly within his purview. *See Gilder v. Auto-Owners Ins. Co.*, 659 N.W.2d 804, 804 (Minn. App. 2003) (holding that "an arbitrator has authority to find facts and apply the law to those facts in order to award, suspend, or deny no-fault benefits").

Second, we previously considered and rejected a similar request to stay or vacate an arbitration award based on fraud committed by someone who is not a party to the arbitration proceeding. *In re Claims for No-Fault Benefits Against Progressive Ins. Co.*, 720 N.W.2d 865, 871-72 (Minn. App. 2006), *review denied* (Minn. Nov. 22, 2006). In *Progressive*, the insurer refused to provide medical-expense benefits for treatment provided by a chiropractic clinic that allegedly committed fraud by overbilling for its services. *Id.* at 868, 871. As in this case, the insurer sought to postpone confirmation of an arbitration award for the insured until after resolution of the insurer’s federal suit against the insured’s treatment provider. *Id.* at 869. We ruled that a stay was inappropriate because (1) payment of the arbitration award had already been delayed for years during a criminal investigation of the treatment provider, (2) the legislature intended for immediate payment of benefits to protect insureds from delayed payments or frivolous denials of coverage, and (3) the insurer had the alternative remedy of directly seeking monetary damages from the treatment provider. *Id.* at 873-74. We further emphasized that confirmation of the arbitration award is consistent with the purposes of the no-fault act, “to ‘speed the administration of justice, to ease the burden of litigation on the courts of this state, and to create a system of small claims arbitration to decrease the expense of and to simplify litigation.’” *Id.* at 873 (quoting Minn. Stat. § 65B.42(4) (2004)).

We discern no reason to deviate from our holding in *Progressive*. Allstate does not dispute that Bernadino was injured in a motor-vehicle accident and has no-fault coverage through Allstate. Allstate’s unresolved legal issues relate solely to the conduct

of Bernadino’s medical providers and do not provide a basis for the district court to vacate or stay the award. While we acknowledge that Allstate may be unable to ultimately recover benefits it paid to Bernadino and other insureds from the medical providers involved in the federal action, this possibility does not outweigh Bernadino’s right to receive prompt payment of her accident-related medical expenses. *See* Minn. Stat. § 65B.42(3) (2010). To hold otherwise would defeat one of the clear purposes of the no-fault act—to provide swift assistance to injured insureds—especially where no allegation of misconduct by the insured is present. Accordingly, we conclude that the district court did not err in confirming the arbitration award.²

Affirmed.

² Bernadino asks this court to award sanctions and attorney fees, arguing that Allstate “utilized this appeal to cause needless delay” and increase costs. *See* Minn. R. Civ. App. P. 138. A party seeking sanctions must make its request “by motion” pursuant to Minn. R. Civ. App. P. 139.06. Because Bernadino has not complied with the procedural requirements to seek sanctions on appeal, we decline to address this issue.