

[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
	:	
	:	

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: JANUARY 25, 1999

I dissent from the majority's conclusion that the Superior Court erred in reversing the trial court where it applied the wrong scope of review in an appeal from an arbitration award. To the contrary, an appellate court must have the ability to review a case in the proper framework when determining if there was error in the forum below.

The Superior Court has previously vacated a trial court's judgment sua sponte where the trial court reviewed an arbitration award pursuant to an erroneous standard. In MGA Insurance Co. v. Bakos, 699 A.2d 751 (Pa. Super. 1997), an automobile insurer petitioned to vacate or modify an arbitration award which was entered in an insured's favor. The petition alleged errors in the arbitration process. The trial court denied the petition and

directed the insurer to pay attorneys' fees. On appeal to the Superior Court, the insurer alleged procedural irregularities and challenged the fee award.

Before reaching these issues, the Superior Court reviewed the insurance policy that applied to the dispute. It provided for arbitration in accordance with the Uniform Arbitration Act. Thus, the court found that the rules of statutory arbitration under the Uniform Arbitration Act of 1980 governed the appeal. MGA, 699 A.2d at 752-53. It determined that under the statute, a court shall vacate an award where there is fraud, where the arbitrator is biased or exceeds his powers, or where there are other procedural irregularities. Id. Notwithstanding the language of the policy and the statutory mandate, the Superior Court found that the trial court reviewed the arbitration award under common law principles, which allow an award to be vacated where a party is denied a hearing or where fraud, misconduct, corruption or another irregularity cause an unjust award. Id. Holding that the trial court erred in reviewing the award under this standard, it vacated the judgment and remanded the case for review pursuant to the principles of statutory arbitration. Id.

Like the Superior Court in MGA, the Superior Court here found that the trial court reviewed the issues before it under an erroneous scope of review. While I recognize that in other cases cited by the majority, the Superior Court has proceeded under an improper scope of review where that scope is not challenged, I disagree with such an approach. Since an appellate court's scope of review establishes the framework for its decision on the substantive issues raised, it seems illogical to preclude it from addressing these issues under the proper scope of review. The job of an appellate court is to review the issues raised pursuant to its scope of review. See, e.g., Cotterman v. Allstate Ins. Co., 446 Pa. Super. 202, 666 A.2d 695 (1995)(before addressing the substantive issues raised in an

appeal from an arbitration award, the court determined the applicable scope of review). As such, I would affirm the decision of the Superior Court.¹

¹ I note that this case is distinguishable from Sammons v. Civil Service Comm'n, No. 78 E.D. Appeal Dkt. 1996, where I joined the Dissenting Statement of Justice Cappy, which concluded that the Commonwealth Court erred in sua sponte considering the competency of the evidence where neither party had challenged it. Unlike the evidentiary issue involved in Sammons, the present case involves the parameters under which the appellate court must operate.