COURT OF APPEALS
DECISION
DATED AND FILED

December 23, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1139 **Cir. Ct. No. 02CV010356**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

HUDEC LAW OFFICES, S.C.,

PLAINTIFF-RESPONDENT,

V.

DARLYNE ESSER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Darlyne Esser appeals from a judgment awarding Hudec Law Offices, S.C., $43,863.93 in attorney's fees. The judgment was entered after the trial court confirmed an arbitration award in favor of Hudec. Esser claims that the trial court's confirmation of the arbitration award should be

vacated because: (1) she did not receive the arbitration she bargained for; and (2) the arbitration panel manifestly disregarded the law. We affirm.

I.

¶2 The record in this case is sparse. It appears that Patrick J. Hudec was Darlyne Esser's attorney. Pursuant to a written contract, Esser agreed to pay Hudec on an hourly basis. At the conclusion of the legal proceedings, Hudec billed Esser for $100,902.51. Esser refused to pay the full amount.

¶3 Hudec and Esser stipulated and agreed to submit the dispute to binding arbitration before the Milwaukee Bar Association Fee Arbitration Committee. A three-member arbitration panel held a hearing on the claim. In a written decision, the panel concluded that Hudec was entitled to $54,006.64 for attorney's fees because:

> [a]lthough Ms. Esser was obviously upset and dissatisfied with the work done by Attorney Hudec, she did not present evidence establishing that Attorney Hudec either billed too many hours, or did not perform the legal services indicated in his billings. In point of fact, counsel for Ms. Esser pointedly stated to the [panel] that Ms. Esser was ***not*** challenging either the number of hours, nor the fact that the legal services described as having been done by Attorney Hudec were, in fact, accomplished. Attorney Hudec testified that he did, in fact, perform all of the legal services listed, and that the fees charged were reasonable. No opposing evidence was presented.
>
> ….
>
> Despite the fact that Ms. Esser called two expert witnesses to testify during the hearing, ***neither*** testified that Attorney Hudec's charges were improper, that he put in too many hours on any given issue or issues, that the hours billed for any aspect of the case were excessive, nor that the hourly charge by Attorney Hudec was excessive.

(Emphasis in arbitration panel decision.) The panel also noted its "concern" over Esser's attempt to present evidence that it characterized as an attorney "malpractice" claim. It determined that it would not consider Esser's evidence because its

> ***sole*** role and purpose [was] to analyze the evidence presented to determine whether or not the disputed legal fees, or any portion thereof, [were], in fact, due and owing. Both parties emphatically stated that this matter was presented as a contract claim and it is on that basis ***only*** that the [panel] addressed the issues.

(Emphasis in arbitration panel decision.)

¶4 Hudec petitioned the Milwaukee County Circuit Court for an order confirming the arbitration award. Esser counter-moved, seeking vacatur of the award. After a hearing, the trial court granted Hudec's motion to confirm and denied Esser's motion to vacate the award. It entered judgment in favor of Hudec for $43,863.93.[1]

II.

¶5 On appeal, Esser alleges that she did not receive the arbitration that she bargained for because the arbitration panel prevented her from presenting the "defense" that Hudec breached the fee contract by providing deficient representation. She claims that the "job of the Fee Arbitration Committee at that point in time was to hear the evidence which was being presented, and not to attempt to interpose its own judgment that it did not want to consider or hear

[1] The trial court reduced the amount owed because Esser paid Hudec $12,385.71 after the arbitration, but before it entered the judgment.

certain types of evidence." She also contends that the panel's failure to consider her alleged defense was a "manifest disregard of the law."

¶6 Esser's allegations require us to look at two things. First, we must determine whether the arbitration panel had jurisdiction over Esser's alleged "defense" under the arbitration stipulation. Second, if the panel had jurisdiction under the stipulation, we must determine whether the panel manifestly disregarded the law when it refused to consider Esser's "defense." We now turn to the first issue.

¶7 Esser appears to allege that the arbitration panel exceeded its authority when it refused to consider what she claims is a breach-of-contract defense. Arbitration matters are subject to the law of contracts, and the court's role is to assure that the parties receive the arbitration for which they bargained. *See* ***City of Madison v. Madison Prof'l Police Officers Ass'n***, 144 Wis. 2d 576, 585, 425 N.W.2d 8, 11 (1988). The concept of substantive arbitrability, that is, whether the parties agreed to arbitrate a particular issue, is central to determining the jurisdiction of the arbitrator, because the arbitrator obtains authority from the agreement of the parties. ***Joint Sch. Dist. No. 10 v. Jefferson Educ. Ass'n***, 78 Wis. 2d 94, 101, 253 N.W.2d 536, 540 (1977). Thus, the party invoking arbitration must point to specific contract language that arguably covers the subject of the grievance. ***Id.***, 78 Wis. 2d at 112, 253 N.W.2d at 545.

¶8 An analysis of Esser's claim requires us to interpret the arbitration stipulation. The stipulation, however, is not in the record. Without the stipulation, we cannot determine what issues the parties agreed to bring before the arbitration panel or the scope of the panel's powers. *See* ***AT&T Techs., Inc. v. Communications Workers of Am.***, 475 U.S. 643, 649 (1986) (an arbitrator cannot

be the judge of the scope of his or her authority under the contract unless the parties have clearly and unmistakably granted the arbitrator such authority). A stipulation to the issues to be arbitrated is attached to the Respondent's brief but is not, however, part of the record on appeal. Therefore, we may not consider it. *See* ***Shoreline Park Pres., Inc. v. Wisconsin Dep't of Admin.***, 195 Wis. 2d 750, 769 n.8, 537 N.W.2d 388, 394 n.8 (Ct. App. 1995) ("our review is limited to the record"). As the appellant, Esser is responsible for ensuring that the record permits us to decide the matters about which she complains. *See* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26–27, 496 N.W.2d 226, 232 (Ct. App. 1993) (when the record is incomplete, we must assume that the missing material supports the trial court's ruling). She has not done so. Thus, Esser's first claim fails because she has not presented any evidence that disputes the arbitration panel's statement, which we quote in paragraph three, that it did not have jurisdiction to consider her alleged defense. *See* ***id.***

¶9 Second, Esser argues that the arbitration panel manifestly disregarded the law when it refused to consider what she labels a breach-of-contract defense. When an issue is properly submitted to arbitration, our function in reviewing the arbitration award is supervisory is nature. *See* ***Lukowski v. Dankert***, 184 Wis. 2d 142, 149, 515 N.W.2d 883, 886 (1994). We will not overturn an arbitrator's award for mere errors of judgment on the law, unless a "manifest disregard of the law" has occurred. ***Joint Sch. Dist. No. 10***, 78 Wis. 2d at 117–118, 253 N.W.2d at 547; *see also* WIS. STAT. § 788.10 (2001–2002) (vacation of arbitration awards).[2] The invalidity of an arbitration award must be

[2] All references to the Wisconsin Statutes are to the 2001–2002 version unless otherwise noted.

demonstrated by clear and convincing evidence. *See* ***Wisconsin Dep't of Employment Relations v. Wisconsin State Bldg. Trades Negotiating Comm.***, 2003 WI App 178, ¶17, ___ Wis. 2d ___, 669 N.W.2d 499.

¶10 There are two reasons why Esser's contention fails. First, as noted, Esser does not show that her alleged defense was arbitrable. Thus, we do not reach the issue of whether the arbitration award was proper because we do not know if Esser's alleged defense should have been considered by the panel. Second, Esser again fails to provide us with the evidence needed to review this claim. A manifest disregard of the law occurs when the arbitrators understood and correctly stated the law but ignored it. ***City of Madison v. Local 311***, 133 Wis. 2d 186, 191, 394 N.W.2d 766, 769 (Ct. App. 1986). The transcript of the arbitration hearing is not in the record.[3] The transcript is necessary in this case to evaluate the evidence Esser tried to present. Without more, we are unable to determine whether the panel understood but ignored the law when it refused to consider what it characterized as a malpractice claim.[4] Indeed, as we have seen, we assume that matters missing from the appellate record support what the trial court did. *See* ***Fiumefreddo***, 174 Wis. 2d at 26–27, 496 N.W.2d at 232.

[3] Indeed, there are no transcripts in the record because Esser claimed that "a transcript is not necessary for the prosecution of this appeal" in her statement on transcripts to the clerk of the court of appeals.

[4] In the response brief, Hudec claims that this appeal is frivolous and "reserves the right to raise such motion until after reviewing [Esser's] Final Appeal Brief." Hudec did not file a motion for frivolous appellate costs. Thus, we do not address the issue.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.