STATE OF MICHIGAN

COURT OF APPEALS

ALICE JENKINS,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION,

Defendant-Appellee.

UNPUBLISHED
January 13, 2022

No. 355452
Wayne Circuit Court
LC No. 17-016141-NF

Before: BOONSTRA, P.J., and CAVANAGH and RIORDAN, JJ.

BOONSTRA, P.J. (*concurring*)

I fully concur. I write separately simply to expand a bit upon my rationale. The parties' arbitration agreement strikes me as less than a model of clarity in some respects. Specifically, it provides in part:

> 1. The parties hereby agree to submit *all factual and legal claims, defenses, and relevant issues relating to Plaintiff's claim for personal protection insurance (PIP) benefits* arising out of an incident occurring on April 24, 2017 while Plaintiff Jenkins was occupying a SMART bus, which is the subject of Wayne County Circuit Court Case No. 17-016141-NF, to independent binding arbitration.
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> * * *
>
> 6. . . . The *following claims shall be submitted for the arbitrator's consideration*, deliberation, and decision and shall form the basis of the arbitration award . . . :
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> > a. *all* medical expenses, hospital expenses, physician expenses. surgical expenses, chiropractic expenses, diagnostic testing expenses; radiology expenses, therapy expenses, injection expenses, medical supply/equipment expenses, medication expenses, transportation expenses, mileage expenses, medical liens and requests for reimbursement by medical providers, health insurers, Medicaid, Medicaid health plans, Medicare or

> other entities (*except those providers who have filed their own lawsuits or intervened into the subject lawsuit as of the date of this Agreement*, including but not limited to Modern Luxe Transportation, Inc., Novi AA'S, LLC, and Wook Kim, M.D., P.C. d/b/a Farmbrook Interventional Pain and EMG), and all other medical expenses and allowable expenses incurred within the meaning of MCL 500.3105 and MCL 500.3107(1)(a) through March 15, 2019 . . . .

Defendant maintains that Paragraph 1 limits the arbitrable claims to those that plaintiff owns (and has not assigned) and that Paragraph 6 must be read in that context. While plausible, this interpretation does not explain why Paragraph 6 contains the italicized "exception" language. That is, if *all* assigned claims were intended to be excluded from arbitration (as defendant contends), why would "providers who have filed their own lawsuits or intervened" be specifically excluded?[1] The language seems superfluous. Indeed, it could be argued that the existence of the exception language suggests that other assigned claims (for which a provider had not filed suit or intervened) were to be included in the arbitration.

I conclude that we need not resolve these contract interpretation issues, however, because a party cannot, in any event, contract to do that which the law does not allow. See *Epps v 4 Quarters Restoration LLC*, 498 Mich 518, 538 n 15; 872 NW2d 412 (2015). Our Supreme Court has long described an assignment as follows:

> In 4 American Jurisprudence, 229, an assignment in law is defined as, "A transfer or setting over of property, or of some right or interest therein, from one person to another, and *unless in some way qualified*, it is properly the *transfer of one's whole interest* in an estate, or chattel, or other thing. It is the act by which one person transfers to another, or causes to vest in another, his right of property or interest therein."
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> The American Law Institute has defined an assignment of a right in its Restatement of the Law of Contracts, section 149(1), as, "A manifestation to another person by the owner of the right indicating his intention to transfer, without further action or manifestation of intention, the right to such other person or to a third person." [*Allardyce v Dart*, 291 Mich 642, 644-645; 289 NW 281 (1939) (emphasis added).]

The issue before us is whether, despite having executed assignments to certain providers, plaintiff retained the right to advance those claims in arbitration. But the assignments contained no qualification or reservation of rights by plaintiff. Consequently, under *Allardyce*, and regardless of the lack of clarity of the arbitration agreement, I agree with the majority that plaintiff

[1] A possible explanation, applying the "last antecedent" rule, is that the exception language relates not to assigned claims but only to "requests for reimbursement." See *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002). But plaintiff has not advanced this argument and, according to defendant, the providers identified within the exception language were indeed the recipients of assignments from plaintiff.

assigned her "whole interest" in those claims and that they therefore were not subject to the parties' arbitration agreement.

/s/ Mark T. Boonstra