

S T A T E   O F   M I C H I G A N  
C O U R T   O F   A P P E A L S

RANDALL KNEPPER, Individually and  
as Next Friend of KATHERINE KNEPPER,  
a minor, and JANET KNEPPER,

SEP 20 1990

Plaintiffs-Counter-  
Defendants-Appellees,

v

No. 113604

AMERISURE INSURANCE COMPANY,  
a Michigan Corporation,

Defendant-Counter-Plaintiff-  
Third-Party Plaintiff-  
Appellant,

v

ROBERT DEWEESE, TRACY LYNN DEWEESE,  
BARBARA ELLEN DEWEESE and FRANKENMUTH  
MUTUAL INSURANCE COMPANY,

Third-Party Defendants.

Before: Wahls, P.J., and Marilyn Kelly and G.S. Allen, Jr.,\* JJ.  
PER CURIAM.

Defendant Amerisure appeals by right from a November 17, 1988, Saginaw Circuit Court order which granted plaintiffs' motion to compel arbitration of their insurance contract dispute and dismissed plaintiffs' complaint and defendant's countercomplaint and third-party complaint. We affirm.

On October 16, 1987, plaintiffs Randall and Janet Knepper were walking along the edge of a road with their two small children, Katherine and Lee, when the family was struck by a car driven by 15-year-old Tracy Lynn DeWeese. The car was owned by Tracy's father, Robert DeWeese, and insured by third-party defendant Frankenmuth Mutual Insurance Company. Frankenmuth denied coverage because Tracy was not a resident of Robert DeWeese's household and, according to Frankenmuth, Tracy was an unlicensed driver who did not have a reasonable belief that she was entitled to drive the car.

\*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Plaintiffs have a contract of insurance with Amerisure. When Frankenmuth denied coverage, plaintiffs contacted Amerisure and submitted a claim for uninsured motorists benefits. Amerisure denied coverage because, according to Amerisure, Frankenmuth's policy applied at the time of the accident. When Amerisure refused to submit the dispute to arbitration as provided in the contract of insurance, plaintiffs filed this lawsuit. On plaintiffs' motion, the trial court ordered the parties to arbitrate their dispute.

A trial court's finding that an issue is arbitrable will not be reversed unless it is clearly erroneous. Marciniak v Amid, 162 Mich App 71, 76; 412 NW2d 248 (1987), lv den 430 Mich 860 (1988); MCR 2.613(C). An issue is arbitrable if (1) there is an arbitration agreement between the parties and (2) the issue is arguably within the arbitration agreement and (3) the issue is not expressly exempt by the terms of contract. Federal Kemper Ins Co v American Bankers Ins Co, 137 Mich App 134, 139-140; 357 NW2d 834 (1984). "If an arbitration clause pertains to the disputed issue and the issue is within the scope of the clause, then it is arbitrable." Id., p 140. Michigan has a strong public policy favoring arbitration, and, therefore, arbitration clauses should be liberally construed to resolve all doubts in favor of arbitration. Marciniak, p 76.

Amerisure's policy under "Part C - Uninsured Motorists Coverage" provides in part:

INSURING AGREEMENT

A. We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury:"

\* \* \*

C. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.

\* \* \*

4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company;

a. denies coverage; or

\* \* \*

ARBITRATION

A. If we and an "insured" do not agree:

1. Whether that person is legally entitled to recover damages under this Part; or
  2. As to the amount of damages;
- either party may make a written demand for arbitration.

Amerisure argued in the trial court that it could not be compelled to arbitrate the issue of whether plaintiffs were entitled to uninsured motorists benefits until there was a binding determination by a court on the issue of whether Frankenmuth's policy applied to the accident. That argument was also the basis for Amerisure's third-party complaint against Frankenmuth. The trial court rejected Amerisure's argument.

We find Amerisure's argument meritless. Obviously, the dispute over whether Frankenmuth's policy applied to the accident is a dispute over whether plaintiffs are entitled to recover uninsured motorists benefits under (C)(1). That dispute is clearly arbitrable. Regardless, Frankenmuth denied coverage, or at least arguably denied coverage, and, therefore, plaintiffs are at least arguably entitled to benefits under (C)(4). Again, that dispute is clearly arbitrable. Notably, resolution of any dispute over whether Frankenmuth did, in fact, deny coverage can be resolved without reference to the issue of whether Frankenmuth's policy applied to the accident. We hold that the trial court did not err when it ordered the parties to submit their dispute to arbitration.

Defendant misinterprets this Court's decisions in DAIIE v Maurizio, 129 Mich App 166; 341 NW2d 262 (1983), lv den 419 Mich 877 (1984), and Hendrickson v Moghissi, 158 Mich App 290; 404 NW2d 728 (1987), which held that the circuit court is not deprived of subject matter jurisdiction by an arbitration agreement. Those decisions recognize that when the defense of an arbitration agreement is timely raised it is improper for the circuit court to decide an arbitrable dispute. Maurizio, supra, p 177; Hendrickson, supra, p 298.

Defendant also claims that the trial court erred when it dismissed defendant's third-party complaint. We disagree. The issue before the trial court was whether defendant should be compelled to arbitrate the dispute. For the reasons stated above, we reject defendant's argument that the issue could not be properly resolved without Frankenmuth. Moreover, the trial court's order dismissing defendant's third-party complaint does not preclude defendant from filing a separate action against Frankenmuth to recover benefits wrongfully paid by defendant. Frankenmuth was not a party to the order because defendant had not served Frankenmuth. Cf. MCR 2.102(E) (dismissal of defendant not served is without prejudice); MCR 2.204(A).

Affirmed.

/s/ Myron H. Wahls  
/s/ Marilyn J. Kelly  
/s/ Glenn S. Allen, Jr.