

STATE OF MICHIGAN  
COURT OF APPEALS

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

July 26, 1993

Plaintiffs-Appellants,

v

No. 132365  
LC No. 88 033092 CZ

AMERISURE INSURANCE COMPANY,

Defendant-Appellee,

and

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

Third-Party Defendants.

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Before: Doctoroff, C.J., and Sawyer and Murphy, JJ.

PER CURLAM.

Plaintiffs appeal from an order of the circuit court vacating an arbitration award rendered in plaintiffs' favor. We reverse.

This action involves a claim arising out of injuries to plaintiff Janet Knepper and her minor daughter, Katherine Knepper, sustained in an automobile-pedestrian accident. The car involved in the accident was being driven by defendant Tracy DeWeese and was owned by her father, third-party defendant Robert DeWeese. Third-party defendant Frankenmuth Mutual was the insurer of the automobile and denied coverage because Tracy DeWeese, a fifteen-year-old unlicensed driver, had taken the vehicle without her father's permission and without a reasonable belief that she was entitled to take the vehicle. Additionally, Frankenmuth denied coverage on the basis that Tracy DeWeese did not reside in her father's household at the time of the accident.

In light of Frankenmuth's denial of coverage, plaintiffs sought coverage under their own uninsured motorist coverage in the policy issued by Amerisure, plaintiffs' insurance company. Amerisure, however, denied coverage on the basis that coverage was, in fact, owed by Frankenmuth. The matter was ultimately submitted to arbitration and an arbitration award was rendered in favor of plaintiffs. During the course of the arbitration, the arbitrators indicated they would not entertain any argument by Amerisure concerning whether the denial of coverage by Frankenmuth was proper, stating that the only relevant issue was whether Frankenmuth had, in fact, denied coverage. Amerisure endeavored to present evidence on the issue of the propriety of Frankenmuth's denial of coverage, but the arbitrators precluded the presentation of any evidence on this issue. Thereafter, the trial court set aside the arbitration award, concluding that Amerisure should have been afforded the opportunity to present the arbitrators with evidence concerning the propriety of Frankenmuth's denial of coverage. The trial court further ordered that the matter be resubmitted to arbitration, which arbitration would include the issue whether or not the denial of coverage by Frankenmuth was a bona fide rejection of coverage.

Plaintiffs first argue on appeal that the trial court erred in vacating the arbitration award. We agree. The uninsured motorist coverage provision of the insurance policy at issue here provides in pertinent part as follows:

the basis that the arbitrators had not considered defendant's evidence regarding the propriety of Frankenmuth's denial of coverage. Rather, the trial court should have confirmed the arbitration award pursuant to MCR 3.602(1). Accordingly, we reinstate the arbitration award in favor of plaintiffs and direct the circuit court on remand to enter an order pursuant to MCR 3.602(1) confirming that award.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiffs may tax costs.

/s/ Martin M. Doctoroff  
/s/ David H. Sawyer  
/s/ William B. Murphy

<sup>1</sup> If no policy applies, then coverage is available under clause (1).