

STATE OF MICHIGAN  
COURT OF APPEALS

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VIRGINIA FULLWOOD, Individually  
and as Next Friend of  
CONSTANCE FULLWOOD, a Minor,

Plaintiff-Appellee,

November 9, 1993

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellant.

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No. 150556  
LC No. 92-201057

Before: Weaver, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Defendant appeals from the order of the circuit court affirming the arbitration award in favor of plaintiff Virginia Fullwood, individually and as next friend of Constance Fullwood, a minor. We affirm.

This case arises from an automobile/pedestrian accident in which four-year-old Constance Fullwood was injured while in the care of her grandmother, Constance Thompson. The facts regarding the accident are not in dispute. On August 30, 1988, Constance was visiting relatives with her grandmother. The child's aunt put the child in the grandmother's car, leaving the door open. The child climbed out of the car and began to cross the street when she was struck by a car driven by an uninsured motorist.

Plaintiff sought benefits for the child's injuries through the uninsured motorist provision of the grandmother's no-fault policy issued by defendant. The parties disagreed as to whether plaintiff was entitled to recover damages, and the matter was submitted to arbitration in accordance with the policy. At the conclusion of arbitration, the panel awarded plaintiff \$20,000. After the award was disclosed, defendant filed a motion before the arbitration panel to vacate the award and render an award of no cause of action in favor of defendant. Defendant argued that plaintiff had not established that the uninsured motorist was negligent. The arbitration panel reopened the case and found that plaintiff had not established negligence. The panel then vacated the original award and entered an award of no cause of action in favor of defendant.

Plaintiff subsequently filed a petition in the circuit court requesting enforcement of the original arbitration award. At the hearing held on the petition, it became apparent that plaintiff's copy of the policy, purportedly given to Mrs. Thompson by her insurance agent, differed from defendant's copy of the policy with respect to the provisions concerning arbitration. The circuit court did not determine which policy controlled, but held that even under the language of the policy proffered by defendant, pursuant to MCR 3.602, the arbitrators were without authority to modify their original award after disclosure of the award to the parties, and that actions taken by the arbitrators regarding the case after the disclosure of the award were void.

Defendant contends that the circuit court erred by applying MCR 3.602 and in holding that the arbitrators were without authority to modify the award once disclosed. Defendant concedes in its brief on appeal that had the arbitration been statutory arbitration, the circuit court's resolution would have been correct. Defendant argues, however, that based upon the language of the policy, the arbitration is a common law arbitration and therefore not subject to MCR 3.602. Defendant contends that as a result, the circuit court had no authority to enforce or vacate the award. We disagree.

Statutory arbitration and common law arbitration coexist in this state. F J Sillar & Co v Hart, 400 Mich 578, 581; 255 NW2d 347 (1977). Statutory arbitration is controlled by MCL 600.5001 et seq.; MSA 27A.5001 et seq., and by MCR 3.602. If an arbitration agreement is statutory, MCR 3.602 governs the judicial enforcement and review of the arbitration award. See MCL 600.5021; MSA 27A.5021; Gordon Sel-Way, Inc v Spence Bros, Inc, 438 Mich 488, 495; 475 NW2d 704 (1991). By contrast, common law arbitration agreements are controlled by the language of the contract. See Whitaker v Seth E Giem & Associates, Inc, 85 Mich App 511, 513; 271 NW2d 296 (1978). Judicial review of a common law arbitration award is limited to instances of bad faith, fraud, misconduct or manifest mistake. Emmons v Lake States Ins Co, 193 Mich App 460, 466; 484 NW2d 712 (1992); Auto-Owners Ins Co v Kwaiser, 190 Mich App 482, 486; 476 NW2d 467 (1991). There is also authority that this limited judicial review includes determining whether the arbitrators acted within the scope of their authority under the contract. Martin v East Lansing School Dist, 193 Mich App 166, 176; 483 NW2d 656 (1992); Lincoln Park v Lincoln Park Police Officers Ass'n, 176 Mich App 1, 4; 438 NW2d 875 (1989).

MCL 600.5001; MSA 27A.5001 provides, in pertinent part:

(1) All persons, except infants and persons of unsound mind, may, by an instrument in writing, submit to the decision of 1 or more arbitrators, any controversy existing between them, which might be the subject of a civil action, except as herein otherwise provided, and may, in such submission, agree that a judgment of any circuit court shall be rendered upon the award made pursuant to such submission.

(2) A provision in a written contract to settle by arbitration under this chapter, a controversy thereafter arising between the parties to the contract, with relation thereto, and in which it is agreed that a judgment of any circuit court may be rendered upon the award made pursuant to such agreement, shall be valid, enforceable and irrevocable save upon such grounds as exist at law or in equity for the rescission or revocation of any contract. Such an agreement shall stand as a submission to arbitration of any controversy arising under said contract not expressly exempt from arbitration by the terms of the contract. Any arbitration had in pursuance of such agreement shall proceed and the award reached thereby shall be enforced under this chapter.

The policy submitted by plaintiff provides, in part, with respect to arbitration that "judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof." If this were the policy in effect, this language would have been sufficient to render the arbitration statutory. MCL 600.5001; MSA 27A.5001; Gordon Sel-Way, Inc, supra. On the other hand, the policy which defendant purports was in effect does not have this statement. Rather, that policy provides, in part, with respect to arbitration:

The arbitration shall take place in the county in which the insured resided unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

We agree with the circuit court that even under the copy of the policy proposed by defendant, the arbitrators' decision to revoke the first award and issue a new award was erroneous and within the authority of the circuit court to vacate. While this copy of the policy does not provide for entry of a judgment by a circuit court on an award, the contract does provide that state court rules govern procedure. The terms of the policy therefore require that any review of the arbitration be conducted by a circuit court in accordance with MCR 3.602. Thus, defendant was required by MCR 3.602(J) to direct its challenge of the original arbitration award to the circuit court, not the arbitration panel. The circuit court therefore correctly held that, even under the language of the policy proffered by defendant, the arbitrators were without authority to modify their original award and that the actions later taken by the arbitrators were void.

Affirmed.

/s/ Elizabeth A. Weaver  
/s/ William B. Murphy  
/s/ Kathleen Jansen