

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES L. WALLACE and ROSANNE E.
WALLACE,

Plaintiffs/Appellees/Cross-Appellants,

v

LENNELL TINNER and MARY L. TINNOR d/b/a
L.T. AUTO PARTS & TOWING,

Defendants/Appellants/Cross-Appellees.

UNPUBLISHED

November 1, 1996

No. 184761

LC No. 90-005003 NI

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

Both defendants and plaintiffs appeal as of right from the circuit court's judgment confirming the arbitration award entered in this case. We affirm.

Plaintiff Charles Wallace, an employee of defendants, was injured while on the job. Because defendants failed to provide the mandated workers' compensation insurance, MCL 418.101 *et seq.*; MSA 17.237(101) *et seq.*, plaintiffs sued defendants in tort for their injuries. The parties agreed to submit the case to binding arbitration and the arbitrators found in favor of plaintiffs. Defendants then filed a motion in circuit court seeking modification of the award, which the court denied. Thereafter, the trial court entered judgment confirming the arbitration award. From that judgment defendants appeal and plaintiffs cross-appeal.

Initially, this appeal raises the issue of whether this Court has jurisdiction to hear the appeal. The circuit court is required to render judgment giving effect to an arbitration award as confirmed after denial of a motion to modify. MCR 3.602(L). The judgment has the same force and effect, and may be enforced in the same manner, as other judgments. *Id.* Accordingly, it is not the denial of a motion to

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

modify, but the judgment which controls this Court's jurisdiction. An appeal from a judgment on an arbitration award is appealable to this Court as of right. MCR 7.203(A)(1); 5 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), Rule 3.602, p 99. Therefore, we conclude that this Court has jurisdiction to hear the appeal.

Second, defendants argue that the arbitrators erred as a matter of law in finding them liable where plaintiffs presented no evidence that defendants' were negligent. This issue was not raised below. Therefore, it has not been preserved for review. *Summers v Detroit*, 206 Mich App 46, 51-52; 520 NW2d 356 (1994). In any case, this issue was waived since defendants failed to provide this Court with a copy of the arbitration award, or any documentation of the arbitration proceedings. *Taylor v Blue Cross and Blue Shield of Michigan*, 205 Mich App 644, 654; 517 NW2d 864 (1994).

Next, defendants argue that the trial court erred by denying their motion for modification pursuant to the statute governing collateral source payments in personal injury actions, MCL 600.6303(1); MSA 27A.6303(1). This Court's review of an arbitrator's award is very limited. *Berrien Co Probate Judges v Mich AFSCME*, 217 Mich App 205, 208; ___ NW2d ___ (1996). We may not pass on the findings of fact or conclusions of the arbitrator reached on the merits of the case. *Id.* We determine whether the arbitrator exceeded his contractual authority, or whether he made an error of law on a controlling issue that is apparent on the face of the award. *DAIIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982); *Berrien, supra*, p 208. Because defendants failed to provide this Court with a copy of the arbitration award, or any documentation of the arbitration proceedings, it is impossible for this Court to make a determination of the extent to which the arbitrator considered this issue. Accordingly, this issue was waived. *Taylor, supra*, p 654.

Finally, on cross-appeal, plaintiffs argue that the lower court erred by not modifying the arbitration award to eliminate the reduction for comparative negligence. A motion to vacate or to modify an arbitration award must be made to the circuit court within twenty-one days of delivery of a copy of the award. MCR 3.602(J)(2) and (K)(1). Plaintiffs failed to raise this issue before the lower court by a motion to vacate or modify. Therefore, we conclude that this issue has been waived. *Kratze v Order of Oddfellows*, 190 Mich App 38, 42; 475 NW2d 405 (1991).

Affirmed.

/s/ Myron H. Wahls
/s/ E. Thomas Fitzgerald
/s/ Leopold P. Borrello