STATE OF MICHIGAN

COURT OF APPEALS

GENERAL MEDICINE, P.C.,

Plaintiff-Appellant,

v

DONALD C. SCHANZ, D.O.,

Defendant-Appellee.

UNPUBLISHED
April 4, 1997

No. 188233
Wayne Circuit Court
LC No. 95-500286

Before: MacKenzie, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition and upholding an arbitration award in favor of defendant in this contract action. We affirm.

Plaintiff argues that summary disposition should not have been granted because the arbitrator exceeded his authority by ignoring the terms of the parties' service agreement. We disagree.

Although the trial court did not specifically state under which subsection of MCR 2.116(C) it was granting summary disposition in favor of defendant, we assume that summary disposition was granted under MCR 2.116(C)(7). A motion for summary disposition may be granted under that subsection when:

> The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, *an agreement to arbitrate*, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. [MCR 2.116(C)(7) (Emphasis added.)]

When reviewing motions under MCR 2.116(C)(7):

> We accept all of a plaintiff's well-pleaded allegations as true and construe them most favorably to the plaintiff. The motion should not be granted unless no factual

development could provide a basis for recovery. [*Jozwiak v Northern Michigan Hospitals, Inc*, 207 Mich App 161, 166; 524 NW2d 250 (1994).]

Michigan public policy favors arbitration to resolve disputes. *Omega Construction Co, Inc v Altman*, 147 Mich App 649, 655; 382 NW2d 839 (1985). When a contract includes an arbitration clause that provides that a judgment may be entered on the arbitration award, that arbitration agreement falls within the purview of MCL 600.5001 *et seq*.; MSA 27A.5001 *et seq*. *E E Tripp Excavating Contractor, Inc v Jackson County*, 60 Mich 221, 237; 230 NW2d 556 (1975). MCR 3.602 which governs statutory arbitration provides, in relevant part:

(J) Vacating Award.

(1) On application of a party, the court shall vacate an award if:

* * *

(c) the arbitrator exceeded his or her powers[.]

The scope of an arbitrator's remedial authority is limited to the contractual agreement of the parties. See *Ehresman v Bultynck & Co, PC*, 203 Mich App 350, 353; 511 NW2d 724 (1994). An arbitrator exceeds his powers when he acts beyond the material terms of the contract from which he draws his authority, or in contravention of controlling principles of law. *Jontig v Bay Metropolitan Transportation Authority*, 178 Mich App 499, 504; 444 NW2d 178 (1989), citing *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). By ignoring express and unambiguous contract terms, arbitrators run an especially high risk of being found to have "exceeded their powers." *Gavin, supra*, p 434.

The *Gavin* Court also adopted the following as the standard of judicial review for a statutory arbitration award:

> Where it appears on the face of the award or reasons for the decision as stated, being substantially a part of the award, that the arbitrators through an error in law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made, the award and decision will be set aside. [416 Mich 443.]

In this regard, the *Gavin* Court noted that, because it is virtually impossible to discern the mental path leading to an arbitrator's award, reviewing courts are frequently left without a plainly recognizable basis for finding substantial legal error:

> In many cases the arbitrator's alleged error will be as equally attributable to alleged "unwarranted" fact-finding as to asserted " error of law." In such cases the award should be upheld since the alleged error of law cannot be shown with the requisite certainty to have been the essential basis for the challenged award and the arbitrator's findings of fact are unreviewable. [416 Mich 429.]

In this case, a review of the two service agreements indicates that in all respects both agreements were clear and unambiguous. Further, there is no legal error clearly appearing on the face of the award, nor is it evident that the arbitrator ignored the clear terms of the agreements. *Henderson v DAIIE*, 142 Mich App 203, 206; 369 NW2d 210 (1985). Because there is no basis for assuming that the arbitrator exceeded his authority, summary disposition in favor of defendant was proper. *Henderson, supra.*

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Janet T. Neff
/s/ Joel P. Hoekstra