

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JACK LAPONSIE, SR., and GLORIA LAPONSIE,

Plaintiffs-Appellees,

v

JAMES LOFTUS, DENISE LOFTUS, JAY  
VELDHEER, and KATHRYN VELDHEER,

Defendants,

and

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant.

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AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellant,

v

JACK LAPONSIE, SR.,

Defendant-Appellee,

and

JAMES LOFTUS, DENISE LOFTUS, JAY  
VELDHEER, and KATHRYN VELDHEER,

Defendants.<sup>1</sup>

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UNPUBLISHED  
September 2, 1997

No. 187944  
Kent Circuit Court  
LC No. 94-0745-CZ

No. 188506  
Kent Circuit Court  
LC No. 94-1181-CH

Before: Saad, P.J., and Neff and Reilly, JJ.

PER CURIAM.

Appellant Auto-Owners Insurance Company appeals by leave granted the trial court's order setting aside the umpire's appraisal award and denying its motion to interplead funds. We affirm.

Appellant first argues that the trial court abused its discretion in setting aside the umpire's appraisal award. We disagree. An appraisal process for settling insurance claims is a common law arbitration procedure. *Auto-Owners Ins Co v Kwaiser*, 190 Mich App 482, 486; 476 NW2d 467 (1991). Judicial review of an appraisal determination is generally limited to bad faith, fraud, misconduct, or manifest mistake. *Emmons v Lake States Ins Co*, 193 Mich App 460, 466; 484 NW2d 712 (1992). Here, because of the limitation presented by the absence of any record, the trial court conducted an evidentiary hearing where the umpire testified concerning his methodology in arriving at the award.<sup>2</sup> Following the evidentiary hearing, the court delivered its findings of fact. The court found "manifest mistake" on the part of the umpire and, on that basis, set aside his award. Given the trial court's special opportunity to hear and to observe the witnesses who testified, those findings of fact are not to be disturbed on appeal unless the appellant demonstrates that they are clearly erroneous. MCR 2.613(C); *Davis v National American Ins Co*, 78 Mich App 225, 238-239; 259 NW2d 433 (1977).

Appellant offers virtually no argument to show that the trial court clearly erred. Rather, its claim consists of the conclusory statement that, when the court questioned the umpire's award, the court substituted its opinion for that of the umpire. Appellant provides no support for that claim, and we reject it. The trial court clearly did not arrive at a different award figure. Rather, the court set aside the award on the ground of manifest mistake, citing typographical errors regarding key information, the divergence between the umpire's testimony and what he stated in his award letter, and the umpire's unconvincing testimony concerning valuation methodology. Because appellant failed to provide any argument or authority to support its conclusory statement that the trial court improperly substituted its judgment for that of the umpire, appellant has failed to demonstrate that the trial court's finding of manifest mistake is clearly erroneous. MCR 2.613(C); *Davis*, *supra* at 238-239.

Appellant next argues that the trial court improperly denied its motion to interplead funds. We disagree. In light of the umpire's award, appellant moved to interplead (i.e., deposit with the court the funds it owed per the umpire's award and then be dismissed from the suit), pursuant to MCR 3.603. The trial court denied appellant's motion to interplead funds after it set aside the umpire's award. Because appellant has failed to demonstrate that the trial court clearly erred in finding manifest mistake, it follows that the trial court properly denied appellant's motion to interplead funds. See *Mihajlovski v Elfakir*, 135 Mich App 528, 535; 355 NW2d 264 (1984).

Affirmed.

/s/ Henry W. Saad

/s/ Janet T. Neff

/s/ Maureen Pulte Reilly

<sup>1</sup> The City of Grand Rapids was also named as a defendant in both lower court cases. However, a stipulation agreeing to the dismissal of the appeal as to the City of Grand Rapids was filed. In an order

dated March 20, 1996, under the authority of MCR 7.218, the Chief Clerk of this Court dismissed the appeal as to the City of Grand Rapids with prejudice and without costs.

<sup>2</sup> The issue of whether the trial court acted properly in conducting this hearing is not before this Court. Appellant did not raise the issue on appeal and did not challenge the propriety of the hearing below.