

STATE OF MICHIGAN  
COURT OF APPEALS

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FRED ROBERT BARDEN,

Plaintiff-Appellee,

v

J. B. HUNT TRANSPORT, INC. and MARK E.  
WEBER,

Defendants-Appellants.

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UNPUBLISHED  
September 5, 1997

No. 193511  
Wayne Circuit Court  
LC No. 92-233807

Before: White, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

In this automobile negligence case, defendants appeal by right from a judgment giving effect to an arbitration award. We reverse.

Plaintiff commenced this action to recover for injuries suffered when his car collided with a truck owned by defendant J. B. Hunt and driven by defendant Weber. After a year and a half of discovery, the parties agreed to dismiss the action and submit their dispute to binding arbitration subject to a high/low agreement. The trial court then entered an order referring the matter to arbitration and dismissing the action with prejudice. On February 7, 1996, the three-person arbitration panel issued a majority decision awarding plaintiff \$300,000. Plaintiff filed a motion in circuit court two days later for entry of a judgment giving effect to the award. After a hearing, the trial court entered both an order reinstating the case and a judgment in favor of plaintiff in the amount of \$300,000.

Defendants contend that the trial court erred in entering a judgment when it did not have jurisdiction to render judgment on the arbitration award. We agree. Whether a court has subject matter jurisdiction is a question of law that this Court reviews de novo. *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 395; 554 NW2d 345 (1996). Michigan recognizes both statutory and common law arbitration. *F J Siller & Co v City of Hart*, 400 Mich 578, 581; 255 NW2d 347 (1977). In statutory arbitration, the circuit court has jurisdiction to render judgment on an award. MCL 600.5025; MSA 27A.5025. By contrast, a common law arbitration award may only be enforced through a separate contract action. *Gibson v Burrows*, 41 Mich 713, 715-716; 3 NW 200 (1879); *McGunn v*

*Hanlin*, 29 Mich 476, 480 (1874); see, also, 4 Am Jur 2d, Alternative Dispute Resolution, § 218, p 247. Here, the parties did not execute a written arbitration agreement, but rather obtained a court order referring their dispute to arbitration. Because the order submitting the parties' dispute to arbitration did not provide that judgment would be entered in accordance with the arbitrators' decision, this case involves common law arbitration. *Beattie v Autostyle Plastics, Inc*, 217 Mich App 572, 578; 552 NW2d 181 (1996); see, also *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 14-15; 557 NW2d 536 (1997). Accordingly, the trial court did not have jurisdiction to enforce the arbitration award because plaintiff did not file a separate contract action, but rather simply moved in the circuit court for entry of judgment on the arbitration award.

Although our decision with respect to the first issue disposes of this case, we address defendants' second argument in an effort to guide the parties and conserve judicial resources. Defendants contend that the trial court erred in entering judgment on the arbitrators' majority decision. We agree. This Court reviews questions of law de novo. *Duggan v Clare Co Bd of Comm'rs*, 203 Mich App 573, 575; 513 NW2d 192 (1994). Unlike in statutory arbitration, where a majority of the arbitration panel may render a final award unless the concurrence of all the arbitrators is expressly required by the agreement to submit to arbitration, MCR 3.602(H), a common law arbitration award must be the unanimous determination of the arbitrators unless the submission indicates otherwise, see *Flint P Smith Building Co v Industrial Savings Bank*, 218 Mich 374, 380; 188 NW 350 (1922); see, also, 4 Am Jur 2d, Alternative Dispute Resolution, § 197, pp 223-224. In this case, the submission order does not provide for a majority decision, and there is no evidence suggesting that the parties made a mistake in preparing the document. Cf. *M'Curdy v Daniell*, 135 Mich 55; 97 NW 52 (1903). Further, the arbitrators clearly indicated in their award that they did not consider it to be binding in the absence of unanimity. The trial court erred in enforcing the arbitrators' decision.

We reverse.

/s/ Richard A. Bandstra

/s/ Michael R. Smolenski