

STATE OF MICHIGAN
COURT OF APPEALS

RUSS VITALE and DEBORAH VITALE,

Plaintiffs-Appellants,

v

WILLIAM E. BUFALINO, II, NUNZIO G.
PROVENZANO, and BUFALINO &
PALAZZOLO, P.C.

Defendants-Appellees,

and

FRANK J. PALAZZOLO,

Defendant.

UNPUBLISHED
September 19, 2006

No. 260603
Wayne Circuit Court
LC No. 00-005306-NM

Before: Murray, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Plaintiffs appeal as of right the January 14, 2005 judgment of the trial court, entered on a binding arbitration award. We affirm.

In this legal malpractice action brought by plaintiffs against defendants, defendants were granted summary disposition by the trial court on two separate occasions. Both orders were appealed, and the case was twice remanded back to the trial court. *Vitale v Bufalino*, unpublished opinion per curiam of the Court of Appeals, issued May 17, 2002 (Docket No. 230560); *Vitale v Bufalino*, unpublished opinion per curiam of the Court of Appeals, issued March 18, 2004 (Docket No. 244228). On second remand, the parties agreed to a binding arbitration, and the plaintiffs were ultimately awarded \$4,500 in that proceeding. The trial court entered judgment on that award after denying plaintiffs' motion to vacate or modify the arbitration award.

On appeal, plaintiffs assert that the award granted by the arbitrators should have been vacated or modified by the trial court because the arbitrators exceeded their authority when rendering their decision.

We review arbitration awards for errors of law appearing on the face of the award. *Belen v Allstate Ins Co*, 173 Mich App 641, 645; 434 NW2d 203 (1988). This Court will not decide if an arbitration award is against the weight of the evidence or unsupported by substantial evidence. *Belen, supra* at 645. “Claims that quarrel with a binding arbitrator’s factual findings are not subject to appellate review.” *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001). Once an issue is submitted to arbitration, judicial review is strictly limited by the uniform arbitration act, MCL 600.5001 *et seq.*, and MCR 3.602. *Krist, supra* at 66.

Under MCR 3.602(J)(1)(c), a court may vacate an award if “the arbitrator exceeded his or her powers.” In addition, under MCR 3.602(K)(1)(b), a court may modify an award when “the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted.” However, our Supreme Court has cautioned that an allegation that the arbitrators have exceeded their powers must be carefully evaluated in order to assure that this claim is not used as a “ruse to induce the court to review the merits of the arbitrators’ decision.” *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 177; 550 NW2d 608 (1996), quoting *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991). It is the agreement that dictates the authority of the arbitrators. *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005).

The agreement in this case required the arbitrators to determine the aggregate amount of damage sustained by plaintiffs and divide the percentage of fault between defendants Bufalino and Provenzano. In calculating the amount of damages, the arbitrators initially proposed an award that apportioned fault to plaintiffs. This proposed award showed that the plaintiffs’ aggregate damages were \$45,000 and that plaintiff was 90% at fault, thereby plaintiffs’ award was to be \$4,500. Plaintiffs argue that this action went beyond the scope of the arbitration agreement. Specifically, the arbitrators’ reasoning in awarding \$4,500 evidences that they exceeded the scope of their authority.

Even if we agreed with plaintiffs that this proposed award evidences that the arbitrators exceeded their authority, judgment was not entered on that proposed award. Rather, the arbitrators amended their judgment and made clear that plaintiffs’ aggregate amount of damages sustained was only \$4,500, and defendant Provenzano was 100 percent at fault. The award made no mention or reference to plaintiffs’ comparative fault. It was on this second order that the trial court entered judgment and it is on this order that we now look for errors of law. See *Krist, supra* at 67. There are no errors of law appearing on the face of the amended award that would warrant modifying or vacating the arbitration award.

The crux of plaintiffs’ argument is that the first proposed award and reasoning behind the award on which judgment was entered reveal that the arbitrators considered plaintiffs’ fault in awarding \$4,500. “This Court is reluctant to become involved in reviewing the methods of deliberations used by arbitrators in reaching their decisions.” *Bradley v Allstate Ins Co*, 133 Mich App 116, 120; 348 NW2d 51 (1984). It is only the kind of legal error that is evident without scrutiny of the intermediate mental indicia, which remains reviewable. *DAIIE v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982). Even in cases where the arbitrators’ alleged error can be equally attributed to allegedly “unwarranted fact finding” and an asserted error of law, the award is upheld because the alleged error of law cannot be shown with the requisite certainty to have been the essential basis of the arbitrators’ findings, and an arbitrators factual findings are not subject to appellate review. *Id.*

We find that there is no error that is clearly apparent on the face of the actual award and we will not dissect the arbitrators' deliberations and first proposed judgment. We find indisputable the fact that the arbitrators intended to award \$4,500. Judgment was correctly rendered by the trial court on the arbitration award.

Affirmed.

/s/ Christopher M. Murray

/s/ Michael R. Smolenski

/s/ Deborah A. Servitto