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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1092**

In re the Arbitration of:
Katie Altenburg o/b/o Ian Altenburg, claimant,
Respondent,

vs.

AAA Insurance Company,
Appellant.

**Filed April 10, 2017
Affirmed
Halbrooks, Judge**

Washington County District Court
File No. 82-CV-15-5793

James S. Ballentine, Alicia N. Sieben, Schwebel Goetz & Sieben, P.A., Minneapolis,
Minnesota (for respondent)

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Considered and decided by Halbrooks, Presiding Judge; Cleary, Chief Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant insurer challenges the district court's order confirming a no-fault
arbitration award in favor of respondent, arguing that the arbitrator exceeded her authority

and displayed evident partiality by awarding outstanding medical expenses. Appellant also asserts that the district court erred by awarding respondent attorney fees. And appellant contends that the statutory requirement for mandatory and binding arbitration of claims for \$10,000 or less, pursuant to the Minnesota No-Fault Automobile Insurance Act (no-fault act), is unconstitutional because it deprives a party of its right to a jury trial, divests the district court of its original jurisdiction, and violates procedural due process. We affirm.

FACTS

In December 2014, respondent Ian Altenburg suffered injuries in a motor vehicle accident. Following the accident, he sought chiropractic treatment for his injuries. Appellant AAA Insurance Company paid no-fault benefits to Altenburg or on his behalf for approximately four months. Based on the results of an independent medical examination conducted in March 2015, AAA notified Altenburg by letter of its intent to terminate and deny any future benefits. The letter further advised him of his right to arbitrate, stating “[i]f you disagree with our decision, you have our permission to arbitrate if the amount in dispute as of the time of filing is \$10,000.00 or less, if over \$10,000.00, we do not agree to arbitrate.” The letter was consistent with the terms of Altenburg’s insurance policy, which provided “[i]f you and we do not agree on your right to receive Benefits involving an amount of \$10,000 or less, the dispute will be settled by arbitration according to the Rules of Procedure for Arbitration of No-Fault Automobile Insurance Act Claims.”

While Altenburg continued treatment, he filed a petition for no-fault arbitration to the American Arbitration Association, seeking recovery of medical expenses in the amount

of \$3,358.33. The American Arbitration Association provided the parties with a list of possible arbitrators, which led to an arbitrator being appointed. Prior to a scheduled hearing, the arbitrator disclosed that she had prior and current clients who had claims against AAA. Neither party objected to the arbitrator's appointment. The arbitrator conducted a hearing and ultimately awarded \$3,438.24 in medical expenses, interest, and fees to Altenburg.

AAA moved the district court to vacate the arbitrator's award on the grounds that the arbitrator acted with evident partiality and exceeded her authority. AAA also sought declaratory relief asserting that the no-fault act's requirement of mandatory and binding arbitration, under Minn. Stat. § 65B.525, subd. 1 (2016), is unconstitutional because it violates a party's right to a jury trial and procedural due process and divests the district court of its original jurisdiction.

The district court denied AAA's motion, determining that the record did not set forth any facts demonstrating that the arbitrator either exhibited evident partiality or exceeded her authority. The district court also concluded that AAA failed to meet its burden to prove that the no-fault act is unconstitutional on any of the three challenged grounds. And the district court confirmed the arbitration award, entered judgment, and awarded Altenburg attorney fees. AAA appeals.

D E C I S I O N

I.

AAA contends that the arbitration award should be vacated because the arbitrator acted with evident partiality and exceeded her authority in making the award. A court may

vacate an arbitration award upon proof of one of the grounds enumerated in Minn. Stat. § 572B.23 (2016). *See AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984). Two possible grounds for vacating an award occur when the neutral arbitrator's conduct demonstrates evident partiality or when the arbitrator exceeds his or her powers. Minn. Stat. § 572B.23(a)(2), (4). The scope of our review of a no-fault arbitration award is extremely narrow, and we must exercise every reasonable presumption favoring the award's finality and validity. *State, Office of State Auditor v. Minn. Ass'n of Prof'l Emps.*, 504 N.W.2d 751, 754-55 (Minn. 1993). When we review an arbitration award, we review legal questions de novo. *Garlyn, Inc. v. Auto-Owners Ins. Co.*, 814 N.W.2d 709, 712 (Minn. App. 2012). But the arbitrator's findings of fact are conclusive. *Id.*

A. Evident Partiality

AAA argues that the arbitrator showed evident partiality in her decision to award medical expenses relating to Altenburg's treatment for an elbow injury. A party challenging an arbitration award on the basis of evident partiality must establish facts that create a reasonable impression of partiality. *Pirsig v. Pleasant Mound Mut. Fire Ins. Co.*, 512 N.W.2d 342, 343 (Minn. App. 1994). Whether the arbitrator's conduct amounts to evident partiality is a question of law that we review de novo. *Aaron v. Ill. Farmers Ins. Grp.*, 590 N.W.2d 667, 669 (Minn. App. 1999). Evident partiality is broader than actual bias in that it is not enough to confirm an award if the arbitrator is unbiased; the arbitrator must also appear to be unbiased. *Pirsig*, 512 N.W.2d at 344. Therefore, evident partiality

generally occurs if the arbitrator has contacts with a party that create at least an impression of possible bias. *Aaron*, 590 N.W.2d at 669.

This record does not present any indication that the arbitrator acted with evident partiality in making the award decision. The parties engaged in a selection process in which they were able to strike and rank potential arbitrators from a list. After an arbitrator was selected and accepted the appointment, the American Arbitration Association informed the parties of their ability to object to the appointment. Neither party objected. Prior to the arbitration hearing, the arbitrator notified the parties that she would act in good faith and be fair to both sides. She also stated at the hearing that, although she was familiar with the parties' counsel, her role in the arbitration process was to remain neutral and that she would listen to each party's arguments. The arbitrator disclosed to the parties that she had prior and current clients who had claims against AAA. But the fact that an arbitrator or the arbitrator's firm represents automobile claimants against an insurer, including the insurer that is a party to the action, does not itself create a presumption of bias. Minn. R. No-Fault Arb. 10(b).

Without pointing to any specific examples that would demonstrate the arbitrator's appearance of bias, AAA broadly asserts that bias is "a systemic problem for all no-fault arbitrations." AAA further alleges that the evidence in the record relating to Altenburg's elbow treatment compels us to conclude that the arbitrator ignored relevant evidence and "simply rubber-stamped the claim." But this amounts to a challenge of the arbitrator's findings and conclusions rather than an argument regarding evident partiality. While AAA may disagree with the arbitrator's award, disapproval does not equate to proof of partiality.

Based on the evidence in this record, we conclude that AAA has failed to provide any facts that demonstrate that the arbitrator's conduct created an impression of partiality.

B. Exceeding Authority

AAA asserts that the arbitrator exceeded her authority by awarding medical expenses for massage therapy and related to the diagnosis of a concussion. Although AAA framed the award of medical expenses related to Altenburg's elbow injury as demonstrating evident partiality, its argument appears to also contest the award as exceeding the arbitrator's authority. We therefore assess the arbitrator's authority to award expenses relating to the massage therapy, the concussion diagnosis, and the elbow injury in turn. A no-fault arbitrator is "limited to deciding questions of fact, leaving the interpretation of law to the courts." *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000). Accordingly, an arbitrator has the authority to make factual findings and evaluate the sufficiency of proof in a no-fault claim. *Garlyn, Inc.*, 814 N.W.2d at 712. "Absent a clear showing that the arbitrators were unfaithful to their obligations, the courts assume that the arbitrators did not exceed their authority." *Id.* at 712-13 (quotation omitted).

First, AAA argues that massage therapy performed independently of chiropractic treatment is not covered as a medical expense under the no-fault act. A no-fault arbitrator exceeds her authority if she interprets, rather than applies, the no-fault act. *Id.* at 712. Interpretation of statutes and whether a particular expense is covered present questions of law for the courts. *Id.* The no-fault act provides that all reasonable medical-expense benefits shall be reimbursed to an insured person for necessary medical services, including

chiropractic services. Minn. Stat. § 65B.44, subd. 2(a)(1) (2016). Minn. Stat. § 148.01 (2016) defines the different types of chiropractic services. “Therapeutic services” are defined as rehabilitative therapy that is “performed within a practice where the primary focus is the provision of chiropractic services, to prepare the patient for chiropractic services, or to complement the provision of chiropractic services.” Minn. Stat. § 148.01(6). “Rehabilitative therapy” is intended to restore an injured patient to maximum functional improvement and encompasses “massage and the use of forces associated with low voltage myostimulation.” Minn. R. 2500.0100, subp. 11 (2015).

AAA’s argument with respect to the massages that Altenburg received is based on the fact that Altenburg’s chiropractor, whose clinic did not provide therapeutic massage treatment, referred Altenburg to another chiropractic practice for massage. We do not agree with AAA’s assertion that such a referral is inconsistent with the plain language of Minn. Stat. § 148.01(6). The referred clinic’s chart notes illustrate that the clinic was aware of Altenburg’s accident and that the massage therapy focused particularly on areas of his body that were injured in the accident. Because the massage therapy is a chiropractic practice and related to Altenburg’s injuries, we conclude that the arbitrator properly applied the relevant statutes and rules by incorporating the massage therapy expenses as part of the award.

Second, AAA asserts that the arbitrator exceeded her authority by awarding medical expenses based on a chiropractor’s concussion diagnosis in January 2015. This argument is based on (1) a chiropractor’s report in June 2015, in which the chiropractor does not diagnose a concussion and (2) a medical doctor’s opinion that “[t]here were no symptoms

at the time of [Altenburg's] injury to suggest that there was [a] concussive element.” But as previously stated, this court may not review whether the record supports an arbitrator’s factual findings. *Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 413 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000). The arbitrator’s findings are final. We conclude that the arbitrator was within her authority in making these findings.

Finally, AAA asserts that the arbitrator disregarded evidence in her decision to award medical expenses related to Altenburg’s elbow injury. AAA argues that because Altenburg did not report any issue with his elbow until five months after the accident and after he resumed playing competitive tennis, the elbow injury must be related to the sport, not the accident. AAA also claims that the arbitrator ignored expert opinion because the June 2015 report from Altenburg’s primary chiropractor did not mention the elbow injury or that it was related to the accident. Again, AAA’s argument amounts to a request that we determine whether the arbitrator’s factual findings are consistent with the evidence in the record. Whether the record supports an arbitrator’s findings is not an issue that we review. *See Sankey*, 605 N.W.2d at 413. For these reasons, we conclude that the district court did not err in confirming the award because the arbitrator did not exceed her authority.

II.

The district court determined that under the Uniform Arbitration Act (UAA), it could award attorney fees and other reasonable expenses incurred during the contested proceeding to the prevailing party upon the prevailing party’s request. *See* Minn. Stat. § 572B.25(c) (2016). The district court awarded attorney fees in the amount of \$1,600 to Altenburg. AAA claims that the district court lacked a statutory or procedural ground for

an attorney-fees award because the no-fault act and Minnesota No-Fault Arbitration Rules do not provide for such an award. Specifically, AAA asserts that it filed its application to vacate the award pursuant to Minnesota No-Fault Arbitration Rule 38, which provided that “[t]he provisions of Minn. Stat. § 572.10 through 572.26 shall apply to the confirmation, vacation, modification or correction of award issued hereunder.” Altenburg responds that Minn. Stat. § 572B.25(c), which allows for the award of attorney fees, is the governing statute because it was in effect at all relevant times.

In 2010, the legislature repealed Minn. Stat. §§ 572.08-.30 (2010) and enacted the current version of the UAA. 2010 Minn. Laws ch. 264, art. 1, § 32, at 511. At the time AAA moved to vacate the arbitration award, rule 38 had not yet been amended to update the citation to Minn. Stat. § 572B.01-.31 (2016). By the time of the award of attorney fees, rule 38 had been amended to cite chapter 572B. Because the prior version of rule 38 was in effect at the time AAA moved to vacate, AAA argues that the prior version of arbitration statutes (Minn. Stat. §§ 572.10-.26) were preserved and continued to be applicable in this case. This argument relies on Minn. Stat. § 645.37 (2016), which provides that “[w]hen a law is repealed and its provisions are at the same time reenacted in the same or substantially the same terms by the repealing law, the earlier law shall be construed as continued in active operation.” Minn. Stat. §§ 572B.01-.31 has significantly different terms and provisions than Minn. Stat. §§ 572.08-.30 and therefore AAA’s reliance on Minn. Stat. § 645.37 is misplaced. See 2010 Minn. Laws ch. 264, art. 1, § 1-31, at 499-50.

The UAA clearly provides that all of its provisions, including the allowance of attorney fees and litigation expenses, govern agreements to arbitrate entered into after

August 1, 2011. Minn. Stat. § 572B.03(a)(1). Here, the insurance policy was effective as of July 2014, nearly three years after the attorney-fees provision became effective. We therefore conclude that the district court properly applied the effective statute and was permitted to award attorney fees to Altenburg.

III.

AAA challenges the no-fault-act requirement of mandatory and binding arbitration for claims of \$10,000 or less on the grounds that it is unconstitutional because it violates its right to a jury trial and procedural due process. AAA also maintains that this no-fault-act requirement unconstitutionally divests the district court of its original jurisdiction. The applicable provision of the no-fault act provides:

The Supreme Court and the several courts of general trial jurisdiction of this state shall by rules of court or other constitutionally allowable device, provide for the mandatory submission to binding arbitration of all cases at issue where the claim at the commencement of arbitration is in an amount of \$10,000 or less against any insured's reparation obligor for no-fault benefits or comprehensive or collision damage coverage.

Minn. Stat. § 65B.525, subd. 1.

Because we recognize a presumption in favor of a statute's constitutionality, a party that challenges a statute has the burden to prove beyond a reasonable doubt that the statute is unconstitutional. *Neal v. State Farm Ins. Co.*, 509 N.W.2d 173, 178 (Minn. App. 1993), *rev'd on other grounds*, 529 N.W.2d 330 (Minn. 1995). "Great caution must be exercised before declaring a statute unconstitutional." *Id.*

The Minnesota Constitution guarantees the right to a jury trial for all cases at law and provides that no person shall be deprived of life, liberty, or property without due

process of law. Minn. Const. art. I, §§ 4, 7. The constitution also provides that the district court has original jurisdiction in all civil and criminal cases. Minn. Const. art. IV, § 3. AAA contends that mandatory and binding arbitration under Minn. Stat. § 65B.525, subd. 1, which results in the district court having limited review of no-fault arbitration awards, violates these constitutional provisions. Altenburg counters that because the arbitrator in this case determined only the amount of loss, not whether AAA is liable, the district court properly decided that the mandatory and binding arbitration requirement did not deprive either party of their constitutional rights.

In *Neal*, we held that mandatory arbitration for no-fault insurance claims does not violate the constitutional right to a jury trial. 509 N.W.2d at 179. We explained that no-fault arbitrators decide only issues of fact and that consideration of legal issues remains with the courts. *Id.* at 175 (citing *Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988)). We further stated that because a no-fault arbitrator only decides the amount of loss (a fact issue) and does not determine the insurance company's liability (a legal issue left to the courts), the statute's requirement for mandatory arbitration did not violate the Minnesota Constitution. *Id.* at 178-79.

Here, the arbitrator's award determined only the amount of loss and reached no conclusions as to whether AAA is liable under the insurance policy. Because this case fits squarely within our analysis in *Neal*, we conclude that AAA has not fulfilled its burden to prove that Minn. Stat. § 65B.525, subd. 1, is unconstitutional.

Affirmed.