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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1807**

American Family Mutual Insurance Company,
Respondent,

vs.

Steven Meyer,
Appellant.

**Filed June 25, 2018
Affirmed in part and reversed in part
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-17-7339

Tammy M. Reno, Kelly P. Magnus, Stich, Angell, Kreidler, Unke & Scattergood, P.A.,
Minneapolis, Minnesota (for respondent)

Donald W. Kohler, White Bear Lake, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Steven Meyer and respondent/cross-appellant American Family Mutual Insurance Company challenge the district court's order vacating, in part, a no-fault arbitration award that required American Family to pay Meyer's medical expenses. Both

parties argue that the district court erred by reducing the arbitration award and abused its discretion by denying their requests for attorney fees. American Family also argues that the district court erred by determining that its no-fault policy is first in priority over an out-of-state policy that covered the vehicle in which Meyer was a passenger. We affirm the district court's determination that American Family is first in priority and its decision to deny attorney fees to both parties. But we reverse the district court's order partially vacating the arbitration award.

FACTS

Meyer was injured in a motor-vehicle accident in Wisconsin on October 16, 2016, when he was a passenger in a vehicle driven by his friend. The vehicle was owned by a Wisconsin resident and insured by West Bend Mutual Insurance Company. Meyer, a Minnesota resident, had automobile insurance on his personal vehicle with American Family. In accordance with Minnesota law, Meyer's policy provided no-fault benefits of \$20,000 in income-loss benefits and \$20,000 in medical-expense benefits. *See* Minn. Stat. § 65B.44 (2016) (outlining basic economic-loss benefits).

Following the accident, Meyer made a claim to American Family for medical-expense benefits. American Family denied the claim, advising Meyer that he had to first seek recovery from West Bend. Representatives from West Bend and American Family apparently agreed that West Bend's policy was primary and that West Bend would pay Meyer's medical expenses if Meyer submitted a claim to West Bend.

After American Family denied no-fault benefits, Meyer petitioned for no-fault arbitration against American Family under Minn. Stat. § 65B.525, subd. 1 (2016).

American Family moved the district court to stay the arbitration so that the district court could first determine whether American Family or West Bend was the first-priority insurer. Because the arbitration was scheduled to occur before the hearing date for the motion to stay arbitration, American Family moved the arbitrator to stay the arbitration. The arbitrator denied the motion to stay, reasoning that the parties could address their legal issues at the subsequent district court hearing.

At the arbitration, Meyer testified about the accident and the injuries that he sustained. He stated that he suffered back and neck injuries, leg and hip pain, and experienced post-traumatic stress disorder. The arbitrator ordered American Family to pay \$14,568.76 plus interest for Meyer's medical expenses. Following the arbitrator's award, American Family converted its motion to stay to a motion to partially vacate the arbitration award, arguing to the district court that West Bend's policy is first in priority.

The district court determined that American Family's policy is first in priority under Minn. Stat. § 65B.47, subd. 4 (2016), which provides that an injured party's insurance is first in priority for basic economic-loss payments. But the district court granted, in part, American Family's motion to vacate the arbitration award. The district court reduced the \$14,568.76 award by one-third to \$9,712.51, reasoning that American Family's policy imposed liability limits when similar insurance applied to the same accident. The district court denied both parties' requests for attorney fees. This appeal follows.

D E C I S I O N

On appeal, Meyer argues that the district court erred by reducing the arbitration award but urges us to uphold the district court's conclusion that American Family must

pay his medical expenses without requiring him to first seek recovery from West Bend. American Family cross-appeals, arguing that the district court erroneously concluded that it is first in priority over West Bend. American Family also asserts that, if it is first in priority, the district court erred by reducing the arbitration award. Both parties challenge the district court's denial of their requests for attorney fees.

I.

We first address American Family's argument that it is not obligated to provide no-fault coverage for any of Meyer's medical expenses until Meyer exhausts the coverage available from West Bend's policy covering the vehicle. American Family contends that a conflict exists between Minnesota and Wisconsin laws and that, by applying a choice-of-law analysis, Wisconsin law applies. American Family asserts that under Wisconsin law, West Bend's policy—which American Family contends provides \$10,000 in medical-payments coverage—is first in priority and, therefore, American Family is not responsible for the first \$10,000 of Meyer's claim. We are not persuaded.

Although American Family asserts that West Bend agrees that West Bend's policy provides up to \$10,000 of applicable medical-expense coverage for Meyer's injuries, West Bend is not a party to this litigation.¹ This action involves an insured, Meyer, seeking

¹ A district court cannot bind a party to results of a previous adjudication without evidence that the party agreed to be bound by that result. *See Bogenholm by Bogenholm v. House*, 388 N.W.2d 402, 405 (Minn. App. 1986), *review denied* (Minn. Aug. 13, 1986). West Bend is not a party to this dispute, and no evidence in the record demonstrates that it agreed to be bound by the results of this case.

benefits from his insurer, American Family, under Minn. Stat. §§ 65B.41-.71 (2016), the Minnesota No-Fault Automobile Insurance Act (no-fault act).

The no-fault act seeks to relieve uncompensated victims from the economic stress caused by automobile accidents, ensure that those victims receive proper medical care by guaranteeing prompt payment of medical expenses, speed the administration of justice, and prevent overcompensation of accident victims. Minn. Stat. § 65B.42; *Scheibel v. Ill. Farmers Ins. Co.*, 615 N.W.2d 34, 37 (Minn. 2000). If Meyer were first required to seek payment through West Bend before recovering no-fault benefits from American Family, Meyer would not receive prompt payment for his medical expenses, and this delay would hinder the administration of justice.

Further, we disagree with American Family's assertion that Minnesota caselaw requires that we engage in a choice-of-law analysis to determine priority level before Meyer is entitled to no-fault benefits. In arguing that we must apply a choice-of-law analysis here, American Family cites to three distinguishable Minnesota cases.

First, American Family relies on *Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 604 N.W.2d 91, 94 (Minn. 2000), which concerned a subrogation claim following an accident involving a North Dakota insured and a Minnesota insured. The Minnesota insurer paid its Minnesota insured no-fault benefits and then brought a subrogation claim against the North Dakota automobile liability insurer. *Id.* at 92-93. The North Dakota insurer sought a declaration that Minnesota law applied, which would have prohibited the Minnesota insurer from subrogating. *Id.* at 93. The Minnesota insurer argued that North Dakota law should instead apply, which allowed for subrogation. *Id.* The supreme court

applied a choice-of-law analysis and held that North Dakota law applied, and therefore the Minnesota insurer could recover from the North Dakota insurer the no-fault benefits that it paid. *Id.* at 94-97. *Nodak* determined the rights of the two insurance companies in litigation to which both were parties, after the insured received no-fault benefits from her own insurer. *Nodak* does not apply to the issue here—whether American Family must provide no-fault benefits to its insured under the no-fault act.

Second, American Family cites *Jepson v. Gen. Cas. Co. of Wisconsin*, which involved an insured who sought to stack underinsured-motorist benefits from an insurance policy that he purchased in Minnesota to cover vehicles that were registered in North Dakota. 513 N.W.2d 467, 467-69 (Minn. 1994). The policy contained an anti-stacking provision for underinsured and uninsured benefits. *Id.* at 469. Because the insured purchased the policy in Minnesota, the insured brought a declaratory-judgment action, requesting that the district court apply Minnesota law, which would have allowed him to stack his underinsured benefits. *Id.* at 469-70. The insurer argued that North Dakota law, which permitted the insurer to enforce the policy's anti-stacking provision, should instead govern the enforcement of the provision. *Id.* After applying a choice-of-law analysis, the supreme court determined that North Dakota law applied and enforced the anti-stacking provision in the policy. *Id.* at 470-73. Thus, the supreme court in *Jepson* engaged in a choice-of-law analysis to determine whether a provision in the insurance policy was enforceable. Here, we are not determining whether a provision in American Family's policy is enforceable, depending on the applicable state law. Instead, we are analyzing what coverage American Family must provide to its Minnesota insured under the no-fault

act. No other state's law affects our analysis of this question. Therefore, *Jepson* does not require us to engage in a choice-of-law analysis.

Third, American Family relies on *Boatwright v. Budak*, 625 N.W.2d 483 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). In *Boatwright*, a passenger was injured in an accident in Iowa in a car that was owned by a Minnesota rental-car company. 625 N.W.2d at 485. The injured passenger sued the driver for negligence and the company for vicarious liability. *Id.* The company moved to limit its liability to \$100,000, arguing that Minnesota's law limiting a rental-car company's vicarious liability should apply. *Id.* (citing Minn. Stat. § 65B.49 (1998)). The passenger argued that Iowa law, which did not limit an owner's vicarious liability, should instead apply. *Id.* We applied a choice-of-law analysis to determine the extent of the rental-car company's vicarious liability. *Id.* at 488-90. Here, we need not apply a choice-of-law analysis to determine Meyer's coverage under his policy.

Because none of the cases applies to this dispute, we look to American Family's insurance policy and the no-fault act to determine Meyer's right to no-fault benefits. The policy provides that American Family will pay personal-injury protection benefits to an insured "in accordance with the *Minnesota No-Fault Automobile Insurance Act*." (Emphasis added.) The no-fault act, particularly Minn. Stat. § 65B.47, outlines the priority of applicability of security for payment of basic economic-loss benefits. Minn. Stat. § 65B.47, subd. 4(a), provides that "[t]he security for payment of basic economic loss benefits applicable to injury to an insured *is the security under which the injured person is an insured*." (Emphasis added.)

Here, Meyer contracted with American Family for insurance that includes basic economic-loss benefits with limits of \$20,000 for medical-expense loss and \$20,000 for income loss so long as the claimed expenses are reasonable, necessary, and causally related to the motor-vehicle accident. Under Minn. Stat. § 65B.47, subd. 4(a), this policy is first in priority. Therefore, we conclude that the district court did not err in applying Minnesota law and ruling that American Family must pay Meyer's no-fault claim.

II.

American Family argues that, if we conclude that it is first in priority, the district court erred by reducing the arbitrator's award of \$14,568.76 by one-third, resulting in an award of \$9,712.51 plus interest. A district court's interpretation of an insurance policy and statutory language involve questions of law that we review de novo. *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 344 (Minn. 2000).

The district court reasoned that "[w]hile the American Family policy is primary under Minnesota law, the policy does impose limits of liability if there is other insurance that applies to the same accident." In making this determination, the district court relied on the following language from the "Limits of Liability" section in American Family's policy that discusses an insured's ability to stack personal-injury protection limits: "If there is other insurance that applies to the same accident: . . . [w]e will pay our share according to this endorsement's proportion of the total limits of all similar insurance." The district court concluded that American Family is only required to pay two-thirds of the award because its policy provides for \$20,000 in benefits and the West Bend policy provides \$10,000 in coverage.

As stated earlier, West Bend is not a party, and its policy is not before us. The no-fault act provides that “[b]asic economic loss benefits *shall* provide reimbursement for *all* loss suffered through injury arising out of the maintenance or use of a motor vehicle, subject to any applicable deductibles, exclusions, disqualifications, and other conditions” Minn. Stat. § 65B.44, subd. 1(a) (emphasis added). This includes accidents involving insureds that occur in a different state. Minn. Stat. § 65B.46, subd. 2. Basic economic-loss benefits include \$20,000 in coverage for “medical expense loss.” Minn. Stat. § 65B.44, subd. 1(a)(1). Therefore, under Minn. Stat. § 65B.44, subd. 1, American Family is responsible for Meyer’s reasonable, necessary, and causally related medical expenses resulting from the accident, up to his policy limit.

Because Meyer’s no-fault award of medical expenses of \$14,568.76 plus interest is within the policy’s limit, American Family must pay the entire arbitration award. We therefore reverse the district court’s order partially vacating the arbitration award.

III.

Both parties contend that the district court erred by denying their requests for attorney fees. Minn. Stat. § 572B.25(c) (2016) provides that a district court may award attorney fees and other reasonable litigation expenses incurred in a judicial proceeding to a party that prevails on a motion to vacate an arbitration award. See Minn. Stat. §§ 572B.23, .25(c) (2016). Meyer did not brief the issue of attorney fees to the district court but included the following provision in his proposed order: “[Meyer] is awarded his costs, disbursements and attorney fees of \$3,500.” The district court denied Meyer’s

motion for attorney fees determining that Meyer was not the prevailing party, as American Family's request to vacate the arbitration award had been partially granted.

Meyer argues that the district court erred by concluding that he did not prevail because American Family initially denied his entire claim for no-fault benefits. But regardless of whether Meyer was the prevailing party, the district court is not required to award attorney fees. Minn. Stat. § 572B.25(c) provides that a district court *may* award attorney fees to a prevailing party; the statute is permissive, not mandatory. And an appellate court generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Further, an assignment of error in a brief based on “mere assertion” and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). Meyer failed to argue, both to this court and the district court, why the district court should have awarded attorney fees. Because Meyer did not adequately support his claim, he has not met his burden on appeal.

American Family argues that it is entitled to attorney fees under Minn. Stat. § 549.211 (2016). A district court may award attorney fees if a party presents a pleading “for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Minn. Stat. § 549.211, subd. 2(1); *see also id.*, subd. 5 (providing available sanctions). We review a district court's denial of attorney fees under Minn. Stat. § 549.211 for an abuse of discretion. *In re Rollins*, 738 N.W.2d 798, 803 (Minn. App. 2007).

The district court denied American Family's motion for attorney fees, reasoning that Meyer prevailed to a large extent and that no evidence demonstrated that his filings were presented for an improper purpose. American Family now argues that the district court erred because Meyer needlessly pursued no-fault benefits from American Family after West Bend purportedly accepted coverage and offered to pay his medical expenses. We disagree. The district court determined that American Family's policy is first in priority. Therefore, the district court did not abuse its discretion by denying American Family's motion for attorney fees.

Affirmed in part and reversed in part.