This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0959

Bennett & Koch Construction, LLC,
Appellant,

vs.

Denise Jones,
Respondent,

Quicken Loans, Inc.,
Respondent,

Novation Credit Union,
Respondent,

John Doe, et al.,
Defendants.

Filed May 10, 2021
Reversed and remanded
Slieter, Judge

Washington County District Court
File No. 82-CV-18-4172

Daniel W. Voss, The Law Offices of Daniel W. Voss, PLLC, Minneapolis, Minnesota (for appellant)

Brenda M. Sauro, Adina R. Bergstrom, Sauro & Bergstrom, PLLC, Oakdale, Minnesota (for respondent Denise Jones)

Considered and decided by Hooten, Presiding Judge; Slieter, Judge; and Klaphake, Judge.[*]

NONPRECEDENTIAL OPINION

SLIETER, Judge

On appeal from the district court's order partially vacating the arbitrator's award, appellant argues that the district court erred by reviewing the arbitrator's award *de novo*. The parties agreed to arbitrate "all proceedings" in the litigation. Therefore, all claims were subject to arbitration and an arbitrator's award will not be set aside for either mistake of law or fact. The district court, therefore, erred by conducting a *de novo* review of the arbitrator's award. We reverse and remand for reinstatement of the arbitrator's award.

FACTS

Respondent-homeowner Denise Jones and appellant-contractor Bennett & Koch Construction, LLC, (B&K) signed a contract in 2017 to remodel Jones' home in Stillwater.[1] Pursuant to the contract, Jones was to pay B&K a fixed price of $80,000 and any change was to "be agreed upon in writing."

The contract contained an arbitration clause which stated: "Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

[1] Respondents Quicken Loans, LLC, and Novation Credit Union possess a secured interest in Jones' home that is not relevant to the issues raised in this appeal.

Industry Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof." The contract specified that in the event of arbitration or litigation, the "prevailing party" was to be awarded attorney fees.

B&K provided, without prior written agreement, $17,458.58 of services for the home beyond the fixed amount of $80,000. Jones paid B&K the $80,000 but refused to pay the additional amount and B&K obtained a mechanic's lien and filed a civil complaint in district court against Jones to foreclose the lien. Jones brought counterclaims alleging slander of title, civil conversion, punitive damages, and fraud, and invoked the arbitration clause of the contract. The parties stipulated to an order, which the judge signed, staying litigation pending arbitration of "all proceedings."

Following an arbitration hearing that spanned five days, the arbitrator awarded $17,458.58 to B&K for extra services provided and $26,550.00 to Jones for her claims "related to repairs/further work." The arbitrator also determined that there was no "prevailing party" and declined to award attorney fees.

Jones moved the district court to vacate the arbitration award, claiming that the arbitrator exceeded its authority by "refus[ing] to follow the contract."

The district court issued an order confirming the arbitrator's award to Jones but vacating the award to B&K on the ground that the arbitrator exceeded the authority granted by the parties' contract. The district court determined that Jones was the prevailing party and awarded her $153,542.67 in attorney fees. B&K appeals.

DECISION

Minnesota Statutes section 572B.23(a) (2018) provides six bases upon which a district court may vacate an arbitration award. The basis raised by Jones is that the arbitrator "exceeded the arbitrator's powers." Minn. Stat. § 572B.23(a)(4). Appellate courts review the scope of an arbitrator's authority *de novo*. *Seagate Tech., LLC v. W. Dig. Corp.*, 854 N.W.2d 750, 760 (Minn. 2014). In determining whether the arbitrator exceeded its authority, our court reviews only whether the arbitrator considered matters that were not properly before it. *See Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 414 (Minn. App. 2000) ("[T]he only issue before us is whether the question decided by the arbitrator was within his authority to decide; we may not examine the underlying evidence and record, or otherwise delve into the merits of the award."), *review denied* (Minn. Apr. 18, 2000).

The supreme court has clarified the arbitrator's role as follows: "The scope of an arbitrator's authority is a matter of contract interpretation to be determined from a reading of the parties' arbitration agreement." *Seagate*, 854 N.W.2d at 761 (quotation omitted). We therefore look to the language of the parties' agreement to determine the scope of the arbitrator's authority. *Id.* "Where . . . a case is submitted to arbitration by order of a court, the scope of the issues submitted is controlled by the court's order" and "anything in the order, or included in a stipulation of the parties, will be before the arbitrator." *Latenser v. John Latenser & Sons, Inc.*, 347 N.W.2d 486, 490 (Minn. 1984). Moreover, the supreme court had stated:

> [A]n arbitrator, in the absence of an agreement limiting his authority, is the final judge of both law and fact, including the interpretation of the terms of any contract, and his award will

> not be reviewed or set aside for mistake of either law or fact in the absence of fraud, mistake in applying his own theory, misconduct, or other disregard of duty.

State, Office of State Auditor v. Minn. Ass'n of Prof'l Emps., 504 N.W.2d 751, 754 (Minn. 1993) (quotation omitted).

Jones claims the arbitrator exceeded its authority by considering issues beyond breach of contract. We disagree. The parties' stipulation, as reflected in the court's order, clearly granted authority to the arbitrator to decide "all proceedings." Because the arbitrator's award was premised on issues subject to arbitration, and because we discern no applicable basis upon which to set aside the award, the arbitrator's award was not subject to *de novo* review by the district court and should be reinstated. *Id.*

Jones also argues, and the district court agreed, that the arbitrator exceeded its authority by determining that neither party was the prevailing party and, thus, awarding no attorney fees. Jones argues that the contract entitles her to attorney fees as the prevailing party. We have determined that a contractual provision providing for attorney fees to the prevailing party is, absent an agreement by the parties to the contrary, subject to arbitration. *See Morrison v. Northern States Power Co.*, 491 N.W.2d 675, 678 (Minn. App. 1992) ("[C]osts and attorney fees are subject to arbitration whether arbitrability is determined by the court order or by the [parties'] agreement."), *review denied* (Minn. Jan. 15, 1993). The issue of attorney fees for the prevailing party was subject to arbitration because it was included in the contract. Therefore, the arbitrator's attorney-fees decision was also not subject to *de novo* review by either the district court or our court and must be reinstated.

In sum, because the arbitrator acted within his authority in addressing the parties' claims, we reverse the district court's order and remand for reinstatement of the arbitrator's award.

Reversed and remanded.