STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0510

American Employers Insurance Company, et al.,
Respondents,

vs.

Robinson Outdoors, Inc., f/k/a Robinson Laboratories, Inc.,
Appellant.

Filed February 10, 2009
Affirmed
Shumaker, Judge

Goodhue County District Court
File No. 25-CV-06-702

Kevin R. Lewis, Foley & Mansfield, PLLP, 250 Marquette Avenue, Suite 1200, Minneapolis, MN 55401 (for respondents)

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Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Collins, Judge.*

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

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

Appellant challenges decisions of an arbitration panel as having been beyond the panel's authority and the district court's confirmation of the award in arbitration. Because the arbitration panel properly exercised the authority conferred by the parties and because the district court properly confirmed the arbitration award, we affirm.

FACTS

The district court confirmed an arbitration award that excluded certain insurance coverage under policies naming appellant Robinson Outdoors, Inc. as insured. Robinson contends that the district court erred because the arbitration panel exceeded its authority in denying coverage and, therefore, the award must be vacated.

Respondents American Employers Insurance Company and Commercial Union Insurance Company, collectively known as One Beacon, issued primary and umbrella commercial liability insurance policies to Robinson. The policies excluded coverage for personal and advertising injury "arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity."

Wildlife Research Center, Inc. sued Robinson in federal court, alleging that Robinson had made false claims in its advertising about some of Wildlife's products and its own products in violation of the federal Lanham Act and Minnesota's Deceptive Trade Practices, Unlawful Trade Practices, False Statement in Advertising, and Consumer Fraud Acts.

The jury returned a verdict of $13.5 million against Robinson, finding that Robinson had violated the Lanham Act and the Deceptive Trade Practices and Unlawful Trade Practices Acts by publishing false advertisements about Wildlife's "Scent Killer" or about Robinson's "Carbon Blast" product, and about Robinson's "Still Steamin' Doe Estrus Urine" product. The jury also determined that Robinson violated the False Statement in Advertising Act by publishing false or misleading advertisements about its Carbon Blast and Still Steamin' products. Finally, the jury found that Robinson published a false or disparaging statement about Wildlife's Scent Killer and that Robinson's advertisements defamed Wildlife's business.

Robinson sought indemnity from One Beacon for Wildlife's damages. One Beacon denied coverage, invoking among other things the false advertising exclusion in Robinson's policies, and brought a federal declaratory judgment action to determine coverage. Robinson raised thirteen affirmative defenses in its answer, asserted five claims against One Beacon in a counterclaim, and asserted a third-party action in its pleadings. Instead of litigating the federal action, One Beacon and Robinson opted to arbitrate the coverage issue. They then executed a "Memo Of Understanding" (MOU) that explained the arbitration agreement. The MOU required One Beacon to advance money to Robinson to settle the Wildlife action up to the policy limit, subject to One Beacon's entitlement to reimbursement in full or in part depending on the resolution of the coverage dispute.

The MOU further provided that (1) the arbitration would be binding; (2) the key issue in the arbitration would be "[w]hether the insurance policy provided by One Beacon

provided coverage for the judgment (indemnity) in the *Wildlife v. Robinson* litigation"; (3) all other claims, except those expressly reserved for the arbitration, would be waived; (4) except as provided in the MOU, "there shall be no further litigation, of any type, over any issue"; and (5) the parties would dismiss the declaratory judgment action.

After hearing testimony, receiving documentary evidence, and hearing oral arguments, the arbitration panel concluded that it was bound by the jury's determination that "Robinson ran advertisements that it knew were false," and, therefore, insurance coverage was excluded.

Robinson contends that the MOU gave the panel authority only to determine coverage for the judgment by "examining the judgment and comparing it with the terms of the policy." Because the panel expanded the arbitration to consider the merits of the *Wildlife* litigation, Robinson argues that it exceeded its authority and that the district court erred in declining to vacate the award.

D E C I S I O N

Arbitration awards are favored in Minnesota, and on appeal "[t]his court "must exercise every reasonable presumption in favor of the award's finality and validity." *Hunter, Keith Indus., Inc. v. Piper Capital Mgmt., Inc.*, 575 N.W.2d 850, 854 (Minn. App. 1998) (quotation omitted). Our standard of review is "extremely narrow." *Id.* We recognize that an arbitrator "is the final judge of both law and fact." *Cournoyer v. Am. Television & Radio Co.*, 249 Minn. 577, 580, 83 N.W.2d 409, 411 (1957). We will not set aside an arbitration award for mistake of law or fact absent a showing of impropriety by the arbitrator. *Id.*

The courts have authority to vacate an arbitration award "only upon proof of one or more of the grounds stated in Minn. Stat. § 572.19." *AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984). The statutory ground Robinson asserts for vacation of the award is that "[t]he arbitrators exceeded their powers." Minn. Stat. § 572.19, subd. 1(3). As the party seeking to vacate the award, Robinson bears the burden of proving that the arbitrators exceeded their powers. *Nat'l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984). "Unless there is a clear showing that arbitrators were unfaithful to their obligations, courts assume they did not exceed their powers." *EEC Prop. Co. v. Kaplan*, 578 N.W.2d 381, 383 (Minn. App. 1998), *review denied* (Minn. Aug. 31, 1998).

Whatever powers the arbitration panel here enjoyed were those Robinson and One Beacon conferred through the MOU. "When parties voluntarily stipulate to an order to arbitrate, it is fair to hold [them] to a broad reading of [the] scope." *Morrison v. N. States Power Co.*, 491 N.W.2d 675, 677 (Minn. App. 1992) (quotation omitted) (alteration in original), *review denied* (Minn. Jan. 15, 1993).

Contending that the language of the MOU is precise and unambiguous, Robinson argues that it "relied on the MOU and its very narrow provision for arbitrating only the issue of 'whether the insurance policy provided by One Beacon provided coverage *for the judgment (indemnity)* in the *Wildlife v. Robinson* litigation.'" Robinson urges that the parties never agreed to relitigate the *Wildlife* lawsuit, or to allow the arbitrators to look beyond the judgment, or to treat as persuasive the federal trial judge's posttrial order stating that "[d]uring trial, Wildlife made a strong showing of the deliberate falsity of

Robinson's advertising." Rather, Robinson asserts, the "sole standard of determination" of coverage is the language of the judgment (presumably the language of the special verdict), and that the judgment supports only a finding that Robinson's advertising was misleading but does not show that it was done with the knowledge of falsity that is the prerequisite to trigger the insurance policies' exclusion.

During the arbitration, Robinson challenged the panel's allowance of evidence beyond a literal reading of the judgment. In its "Memorandum of Opinion," the panel acknowledged Robinson's contention that the MOU "precludes a determination on the merits," and in response the panel stated that it "rejects this position," and implicitly indicated that it had to investigate the merits "to determine the existence of coverage as part of its charge under the MOU." The district court agreed.

We are not bound by what the panel or the district court thought was the authority conferred by the MOU; rather, our review of that issue is de novo. *County of Hennepin v. Law Enforcement Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 824 (Minn. 1995). However, our review is limited entirely to that issue, and "we may not examine the underlying evidence and record, or otherwise delve into the merits of the award." *Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 414 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000). Thus, if the panel had the authority to look beyond the language of the judgment in the *Wildlife* action, we may not review the accuracy of either its factual or legal determinations. *See State, Office of State Auditor v. Minnesota Ass'n of Prof'l Employees*, 504 N.W.2d 751, 754 (Minn. 1993) (holding that arbitrators' findings as to

fact and law are binding even if erroneous). Nor may we vacate the award merely because we might disagree with it. *Id.* at 754-55.

Under the One Beacon policies, coverage is excluded for certain injuries "arising out of" false advertising if Robinson had "knowledge of its falsity." One Beacon's position in its declaratory-judgment litigation was that Robinson's advertising in question was false and that Robinson knew it to be false, thus triggering the policy exclusion. Had that litigation gone forth, it is hardly debatable that, to determine coverage and the applicability of the exclusion, the court would have had to hear evidence as to the actual conduct underlying the jury's findings. But that litigation was dismissed in favor of arbitration, which the parties stated was intended to preclude "further litigation, of any type, over any issue" except coverage.

Although the MOU couched the issue for arbitration in terms of whether there was "coverage for the judgment (indemnity)," there are four reasons that we reject Robinson's argument that the parties intended the judgment language to be the sole source or reference for determination of the coverage dispute. *See State v. Berthiaume*, 259 N.W.2d 904, 909 (Minn. 1977) ("[A]rbitrability . . . is to be determined by ascertaining the intention of the parties from the language of the agreement itself.").

First, the MOU grew out of the declaratory-judgment litigation and provided for arbitration in lieu of that litigation. At the time they entered the MOU, both parties knew precisely the nature and substance of the coverage dispute, at least as it applied to the exclusion. Both parties intended arbitration to resolve that dispute, understanding that there could be no further litigation of that issue, or any other issues. It is implausible to

conclude that the parties intended only the language of the special verdict to control for that would clearly preclude One Beacon, who had the burden of proving the applicability of the exclusion, from showing conduct that established the exclusion. Coverage was at all times the issue, and it is not reasonable to conclude that One Beacon would give up its right to fully litigate that issue in favor of a relatively pro forma presentation or that Robinson believed that One Beacon was giving up that right when it agreed to dismiss the declaratory-judgment action.

Second, the MOU refers to "coverage for the judgment (indemnity)" but does not expressly or impliedly limit the arbitration panel to a consideration solely of the language of the judgment. Had the parties so intended, it is reasonable to presume that they would have clearly said so, particularly because, as noted above, One Beacon would thereby relinquish in part its ability to prove the applicability of the exclusion. The reasonable view of the language the parties selected is that "judgment (indemnity)" was a short-hand reference to the liability for which Robinson was claiming it was entitled to indemnity. A judgment for money damages had been rendered. Robinson contended that it was entitled to insurance proceeds to pay the judgment; One Beacon took the position that there was no entitlement. The issue to be determined under the MOU was coverage under the insurance policy. Robinson's argument that the panel was confined to the language of the judgment completely ignores the fact that the policy controls. To determine how the policy controls, Robinson's actual conduct needed to be examined. The judgment surely was includable in the context of that examination but was not

dispositive, nor did the judgment language even describe the particular conduct that led to the jury's ultimate legal conclusions.

Third, as noted previously, when parties voluntarily stipulate to arbitrate an issue, "it is fair to hold [them] to a broad reading of [the] scope" of that issue. *Morrison*, 491 N.W.2d at 677 (quotation omitted) (alterations in original). Robinson's narrow, restrictive scope of arbitrability of the coverage issue violates this principle.

Fourth, and perhaps most significantly, the judgment language is insufficient to resolve the coverage issue because it does not in any of the particulars of liability specifically address either of the essentials of the coverage dispute, namely, (1) whether the injuries Wildlife suffered arose out of Robinson's oral or written publications, and (2) whether Robinson had knowledge of any alleged falsity in advertising materials. Robinson argues that the judgment omits a determination of the knowledge requirement. That argument is precisely correct and is the reason the judgment itself cannot be taken to have resolved the very issue the MOU was designed to resolve. Thus, the parties could not reasonably have intended to limit the panel to a source of information that was plainly inadequate to permit the panel to decide the very issue for which it was convened.

For these reasons, we hold that Robinson and One Beacon did not intend to limit arbitrability to the language of the judgment but rather intended that the panel determine coverage under the insurance policies. The only way the panel could do that was to consider Robinson's conduct in its advertisements.

Because the panel did not exceed the authority conferred upon it through the MOU, we need not reach the factual and legal issues on which both parties focused much

of their respective arguments. Nor need we address Robinson's "manifest disregard" argument for the panel did not engage in any impropriety in looking beyond the language of the judgment. Furthermore, the district court properly and correctly confirmed the arbitration award.

Finally, the panel awarded to One Beacon $3,684,428.19, representing reimbursement for which Robinson is obligated under the MOU, namely, for sums One Beacon advanced to settle the *Wildlife* litigation. The MOU provides for such reimbursement. The panel also awarded $425,747.55 to Robinson against the One Beacon insurers. In confirming the arbitration award, the district court offset the amount Robinson is entitled to receive from the reimbursement Robinson owes. Robinson contends that a lump-sum award exceeded the panel's authority and that final sums due depend on the later resolution of attorney fees for Robinson's defense costs up to the date of the MOU.

The MOU does not preclude a lump-sum reimbursement award and specifically provides for interest on the award. Furthermore, the MOU provision regarding defense costs pertains to One Beacon's liability for those costs and not, as Robinson argues, to the rate of repayment of the reimbursement award. We find no error regarding the monetary issues raised on appeal.

Affirmed.