STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2139

Lucia Saavedra,
Respondent,

vs.

Illinois Farmers Insurance Company,
Appellant.

Filed June 27, 2011
Affirmed; motion denied
Minge, Judge

Hennepin County District Court
File No. 27-CV-10-19257

Conor E. Tobin, Thomas R. Bennerotte, Bennerotte & Associates, P.A., Eagan, Minnesota (for respondent)

Richard S. Stempel, Stempel & Doty, PLC, Hopkins, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Minge, Judge; and Muehlberg, Judge.*

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

MINGE, Judge

Appellant challenges the district court's order confirming a no-fault arbitrator's award of reasonable and necessary medical expenses to the respondent. Appellant argues

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

that the district court erred by not postponing confirmation until after the resolution of appellant's claims in the federal courts against respondent's treatment providers. Because the district court did not abuse its discretion in denying appellant's de facto motion to stay confirmation and because the district court does not have the authority to deny confirmation absent a motion to vacate, modify, or correct the arbitration award; we affirm.

FACTS

Respondent Lucia Saavedra sustained injuries in an automobile accident. Through a friend, she contacted Linea Latina de Accidentes, who arranged for Advanced Injury Specialists to provide Saavedra with recurring chiropractic treatments. Saavedra filed a no-fault-insurance claim for chiropractic services with appellant Illinois Farmers Insurance Company. When Farmers denied her claim, Saavedra filed a petition for arbitration. After a hearing, the arbitrator determined that the chiropractic services were reasonable and necessary, and that Saavedra was entitled to an award amount of $16,350.45.

At the time of Saavedra's claims, Farmers joined several other insurance companies in bringing a civil action in federal district court against Linea Latina and Advanced Injury Specialists, alleging various claims, including (1) violations of the federal Racketeer Influenced and Corrupt Organizations Act (RICO); (2) conspiracy to perpetrate racketeering activity; (3) consumer fraud; (4) intentional misrepresentation/no-fault fraud; (5) solicitation; and (6) failure to disclose financial interest. *Allstate Ins. Co. v. Linea Latina de Accidentes, Inc.*, No. 09-3681, 2011 WL 692909 (D. Minn. Feb. 16,

2011). The federal suit alleges that Linea Latina and Advanced Injury Specialists are engaged in systematic efforts to directly and illegally solicit people involved in accidents and to bill for unnecessary services or services not rendered, and that the businesses are incorporated in violation of the rules limiting corporate practice of medicine.

Farmers refused to pay Saavedra's claim for medical expenses until resolution of the federal suit. Saavedra moved the district court to confirm the arbitration award. After a hearing, the district court confirmed the arbitration award, including additional statutory interest. Farmers appeals the district court's confirmation order. In addition, Saavedra has moved this court for sanctions and attorney fees.

D E C I S I O N

An arbitration award is not the equivalent of a tort judgment and is not legally binding until it is confirmed by the district court. *Murray v. Puls*, 690 N.W.2d 337, 342 (Minn. App. 2004). The district court "shall confirm an [arbitration] award, unless . . . grounds are urged for vacating or modifying or correcting the award . . . ." Minn. Stat. § 572.18 (2010). The arbitration award shall be vacated if it was procured by fraud or if the arbitrator exceeded its power. Minn. Stat. § 572.19, subd. 1(1), (3) (2010). If all pending motions to vacate, modify, or correct the arbitration award are denied, then the district court "shall confirm the award." Minn. Stat. §§ 572.19, subd. 4, .20, subd. 2 (2010).

Generally, an arbitrator is the final judge of both law and fact. *Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988). In the area of no-fault automobile insurance, though, "arbitrators are limited to deciding issues of fact, leaving

the interpretation of the law to the courts." *Id.* When no-fault arbitrators determine issues of law, they exceed their authority. *Great W. Cas. Co. v. Kroning*, 511 N.W.2d 32, 35 (Minn. App. 1994), *review denied* (Minn. Mar. 15, 1994). Therefore, if a motion to vacate is brought alleging the arbitrator exceeded its authority, the district court must conduct a de novo review of the arbitrator's legal determination. *Gilder v. Auto-Owners Ins. Co.*, 659 N.W.2d 804, 807 (Minn. App. 2003).

Farmers did not bring a motion to vacate, modify, or correct the arbitration award; indeed, Farmers does not challenge the arbitrator's award in any way. Instead, Farmers argues that confirmation should merely be postponed until resolution of the insurance-coverage issues pending in the federal suit. We interpret Farmers's argument as (1) a de facto request for a stay of the confirmation proceedings; and, alternatively, as (2) a claim that the district court had discretion to deny confirmation of the arbitration award, despite the lack of a motion to vacate, modify, or otherwise correct the award.

I. DE FACTO STAY REQUEST

The first issue is whether the district court abused its discretion by denying Farmers's request to postpone confirmation of the award. A "stay" is defined as both a "postponement or halting of a proceeding, judgment, or the like" and an "order to suspend all or part of a judicial proceeding or a judgment resulting from that proceeding." *Black's Law Dictionary* 1548 (9th ed. 2009). Farmers' request that the district court delay confirmation of the award is akin to requesting a "stay" without actually using the term. We review a denial of a stay pending the outcome of federal proceedings for an abuse of discretion. *In re The Claims for No-Fault Benefits Against Progressive Ins. Co.*,

720 N.W.2d 865, 873 (Minn. App. 2006). When determining whether to defer to another court, the district court "must determine which action will best serve the parties' need for a comprehensive solution, consider judicial economy, cost and convenience to the litigants, and assess the possibility of overlapping multiple determinations of the same dispute." *Green Tree Acceptance, Inc. v. Midwest Fed. Sav. & Loan Ass'n of Minneapolis*, 433 N.W.2d 140, 142 (Minn. App. 1988). "We consider these factors in light of the purposes of Minnesota's No-Fault Act, which include to 'speed the administration of justice, to ease the burden of litigation on the courts of this state, and to create a system of small claims arbitration to decrease the expense of and to simplify litigation.'" *Progressive*, 720 N.W.2d at 873 (quoting Minn. Stat. § 65B.42(4) (2004)).

In *Progressive*, an insurer sought to postpone confirmation of an arbitration award for a claimant until after resolution of the insurer's federal suit against the claimant's treatment provider by bringing motions to vacate or stay the award. *Id.* at 868–69. We ruled then that a stay was inappropriate because (1) payment of the arbitration award had already been delayed for years during a criminal investigation of the treatment provider; (2) the legislature intended for immediate payment of benefits to protect the claimant from delayed payments or frivolous denials of coverage; and (3) the insurer had the alternative remedy of directly seeking and recouping monetary damages from the treatment provider. *Id.* at 873–74. Here, the district court determined that our *Progressive* decision created a rule that, in no-fault matters, third-party fraud is not a reason to stay an arbitrator's award or a confirmation award, and therefore denied Farmers's motion.

Our intent in *Progressive* was not to create a strict rule but instead to outline a balancing test of various factors. But because of its similarities to the case here, the district court's reliance on *Progressive* was not in error. Payment of Saavedra's claim has already been delayed for over two years, and Farmers concedes that the federal litigation will not conclude until May 2012, at the earliest. Farmers's proposed remedy would leave Saavedra, the insured, in limbo for at least one more year. Therefore, granting the stay would not serve the interests of the insured, hasten the administration of justice, or promote judicial economy.

We also note that the legislature expressed its preference for immediate payment of no-fault benefits by imposing sanctions for late payments—benefits not paid within 30 days are considered overdue and are subject to interest accrual. Minn. Stat. § 65B.54, subds. 1–2 (2010). Also, the legislature provided Farmers with a remedy for its current situation: The statute authorizes Farmers to bring a direct action against Linea Latina and Advanced Injury Specialists to recover benefits paid as a result of their intentional misrepresentations of material facts. *See* Minn. Stat. § 65B.54, subd. 4 (2010).

Farmers argues that, if forced to pay the claim before resolution of the federal suit, Farmers may never recover the payments because Linea Latina and Advanced Injury Specialists will declare bankruptcy or otherwise avoid repayment. Although a concern, the record does not indicate that this is likely to occur. Therefore, this argument is unpersuasive.

Also, Farmers argues that confirmation of the arbitrator's award would "prematurely conclude a case that still has unresolved legal issues." However,

confirmation merely removes Saavedra as an interested party to Farmers's larger dispute with health-care providers, a result intended by the no-fault insurance laws. *See Progressive*, 720 N.W.2d at 874. Farmers suggested that it was willing to hold Saavedra harmless should Advanced Injury Specialists pursue compensation for services rendered. But there is no evidence that such a hold-harmless offer was made to Saavedra.

Therefore, because the statutory no-fault scheme clearly intends prompt payment of claims to protect the insured and because payment has already been delayed a significant amount of time, we conclude that the district court did not abuse its discretion by denying Farmers's motion for delay, or a "de facto stay," of confirmation of the arbitration award.

II. DISCRETION

Second, we consider whether the district court had the authority to deny confirmation of the arbitration award absent a motion to vacate, modify, or otherwise correct the award. Under the statute, the district court "shall confirm" an arbitration award unless a motion to vacate or correct the award is pending. Minn. Stat. § 572.18. "The canons of statutory construction provide that 'shall' is mandatory." *State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998); *see also* Minn. Stat. § 645.44, subd. 16 (2010). In addition, the supreme court has held that, when no motion to vacate was brought within 90 days of an arbitration award, the district court "was obliged to confirm the award." *Component Sys., Inc. v. Murray Enter. of Minn., Inc.*, 300 Minn. 21, 25, 217 N.W.2d 514, 516 (Minn. 1974). The plain language of the statute indicates that, absent a motion to vacate, modify, or correct, the district court is required to confirm the arbitration award.

Farmers argues that Minnesota caselaw recognizes an exception to this confirmation requirement when underlying insurance-coverage issues are being litigated in the federal courts. Farmers cites to *Kroning* and *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90 (Minn. 2006), for support.

In *Kroning*, the district court performed a full, de novo review of the arbitrator's determination of a legal issue because the insurer brought a motion to vacate. 511 N.W.2d at 35–36. Here, Farmers did not bring any motion. Without a motion to vacate, the district court has no authority to independently review the arbitrator's decision or deny confirmation. In addition, Farmers deliberately chose not to argue the insurance-coverage issues to the arbitrator or to the district court. Having failed to properly present this issue to the district court, Farmers cannot now argue this issue on appeal.

In *Isles Wellness*, the insured assigned their benefit claims to their treatment provider and the provider brought suit against the insurer for payment. 725 N.W.2d at 91–92. The provider was not ordered to pay the claim until after the supreme court's determination on certain insurance-coverage issues. *Id.* at 95. Farmers argues that *Isles Wellness* authorizes them to delay payment of Saavedra's claim until after the resolution of insurance-coverage issues pending in federal court. However, in *Isles Wellness*, the insured was no longer involved in the proceedings, and the provider's claim was presented to the district court and found void. *Id.* at 92. Other jurisdictions, such as New York, have found that an insurer could postpone payment of no-fault claims only when the insured had assigned its claim to the treatment provider. *See State Farm Mut. Auto. Ins. Co. v. Mallela*, 827 N.E.2d 758, 759 (N.Y. 2005). Here, because Saavedra has not

assigned her claim and because the district court initially found Farmers liable, Farmers's reliance on *Isles Wellness* is misplaced.

Ultimately, because the no-fault statutory language does not provide the district court with the authority to deny confirmation absent a motion to vacate, modify, or correct, and because the district court did not abuse its discretion in denying Farmers's motion to stay the proceedings, we affirm the district court's order confirming the arbitration award.

III. ATTORNEY FEES

Finally, we consider Saavedra's claim for attorney fees. A court may impose an appropriate sanction, such as payment of reasonable attorney fees, if a party presents an appeal for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation. Minn. Stat. § 549.211, subds. 2, 3 (2010). Although we have rejected Farmers's arguments, we recognize that Farmers faces financial risks in paying claims, that there is no showing that Farmers brought its claim in bad faith, and that the legal problem is unique. Accordingly, we deny Saavedra's motion for attorney fees and sanctions.

Affirmed; motion denied.

Dated: