
State of Minnesota
In Court of Appeals

PROGRESSIVE INSURANCE COMPANY,

Appellant,

vs.

EDGAR VILLAFANA PALLARES,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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STATEMENT OF LEGAL ISSUES

- I. Did the District Court err in denying Appellant's attempts to vacate the arbitration award because Appellant failed to file the appropriate Motion to Vacate with the Court?

Trial Court Ruling: The District Court confirmed the arbitration award and made no ruling on Appellant's claim of fraud because Appellant failed to file a Motion to Vacate the arbitration award, as required by Minn. Stat. 472.19 and by the M.R.C.P. §7.02.

Apposite Statutes:

Minn. Stat. §472.19
M.R.C.P. §7.02

- II. Did the District Court err in denying Appellant's informal request for a stay of the proceedings where Appellant failed to file any Motion for a Stay?

Trial Court Ruling: The District Court did not rule on Appellant's Informal request for a stay because Appellant did not file a Motion for a Stay, as required by M.R.C.P. §7.02.

Apposite Statutes:

M.R.C.P. §7.02

- III. Appellant cannot raise new issues on appeal that it did not bring before the District Court.

Apposite Cases:

Thiele v. Stich, 425 N.W.2d 580, 582 (Minn.1988).
Rouland v. Thorson, 542 N.W.2d 681, 684 (Minn. App. 1996).
Minnesota Cent. R. Co. v. MCI Telecommunications Corp., 595 N.W.2d 533, 539 (Minn. App. 1999).

STATEMENT OF THE CASE

This is an appeal from the Order of the District Court dated August 8, 2005 as supplemented by the Order dated September 6, 2005 which confirmed an arbitration award dated December 21, 2004.

The arbitration award in question involved a No Fault insurance claim that had been duly rendered by a duly-appointed arbitrator pursuant to the Minnesota No Fault Arbitration Rules promulgated by the Minnesota Supreme Court pursuant to the authority granted by the Minnesota legislature in the Minnesota No Fault Insurance Act, Minn. Stat. 65B.525.

The District Court confirmed the arbitration award because the Appellant, Progressive Insurance Company, never filed a proper Motion to Vacate the award pursuant to Minn.Stat. 572.18. Appellant has raised points of error claiming that the District Court erred with regard to issues that were never properly raised in the lower court.

STATEMENT OF FACTS

Respondent, Edgar Villafana Pallares, was injured in a motor vehicle collision that occurred on April 10, 2002. He was, at the time, insured with Appellant, Progressive Ins. Co., under a policy of automobile insurance that including the statutorily-mandated No Fault coverage.

Progressive initially accepted its legal responsibility to pay Pallares' medical expenses. Later, Progressive refused to pay additional expenses. Pallares' filed for arbitration of the claim with the American Arbitration Association pursuant to Minnesota Statute §65B.525, promulgated by the Minnesota Supreme Court.

An arbitrator was duly appointed. A hearing was duly held pursuant to the Rules and an Award was duly rendered in favor of Pallares on December 21, 2004. See A-4.

On the 90th day after the award, Progressive filed its Notice of Motion to Vacate the Award in District Court. No Motion was ever filed with the Court. Only a Notice of Motion, without supporting Motion, was filed with the Court and served on Respondent's counsel. The Notice of Motion contained only a conclusory allegation of fraud. It did not contain any allegations of fact or law to support that conclusion as required by Rule 7.02 of the Minnesota Rules of Civil Procedure. See A1-2.

Respondent filed a Motion to Confirm pursuant to Minn. Stat. §572.18.

Respondent filed a Motion to Dismiss, claiming that Progressive had failed to comply with the requirements of Minn. Stat. §472.19.

Instead of proceeding with the merits of the case, Progressive requested a stay. However, it did so only by letter to the Court and never filed a formal Motion with the Court.

In support of its letter-form request for a delay, Progressive's attorney falsely claimed that it was prevented from disclosing facts which would support its conclusory allegation by a "protective order" issued by some other court. The falsity of that claim was ultimately revealed. There never was any such "protective order" which in any way prevented Progressive from disclosing facts which would support its claim of fraud.

Even after Progressive admitted to the Court that the fictitious "protective order" had been lifted, Progressive failed to file any Motion to Vacate.

STANDARD OF REVIEW

The standard of review on appeal from the decision of a District Court that has confirmed an arbitration award has been established in the case law as follows:

1. The review is extremely narrow and will be confined to the sole issue of whether the arbitrator exceeded his or her authority. Liberty Mutual v. Sankey, 605 N.W.2d 411, 413-414 (Minn. App.2005).
2. It is not proper to examine the underlying evidence or delve into the merits of the case. Id.
3. Only rulings of law, and not decision of fact, are to be reviewed. Id. The review of legal rulings will be limited to the record created in the arbitration. Affidavits of the arbitrator, attorneys, or others are not to be considered to impeach the award. Grudem Brothers Co. v. Great W. Piping Corp., 213 N.W.2d 920 (Minn. 1973).
4. Great deference will be given to the decisions of the arbitrator. Only clear errors of law are subject to review. Liberty Mutual at 413.
5. The scope of the review is limited to the issue of whether the party challenging the arbitration award has met the burden of showing that there are grounds for vacation of the award as itemized in Minn. Stat. §572.16 et. seq. No other review is appropriate beyond the statutory grounds.

“It is well settled that arbitration is meant to be a final judgment of both law and fact.” Johnson v. Consolidated Freightways, Inc., 420 N.W.2d 608,613 (Minn. 1988). “Minnesota law clearly establishes that an arbitration award constitutes a final judgment on the merits for collateral estoppel purposes.” Landmark Partners, Inc. v. Michael Investments, 2002 WL 17688, 3 (Minn. App. 2002) (citing Aufderhar v. Data Dispatch, Inc., 452 N.W.2d 648, 651 (Minn. 1990)).

Courts assume that arbitrators are faithful to their obligations, absent a clear showing that their authority has been exceeded. Id. at 420 (citing Hilltop construction Inc. v. Lou Park Apartments, 324 N.W.2d 236 (Minn. 1982)). Indeed, a court will not even set aside an arbitration award because it thinks the arbitrators erred as to the facts or law, as long as the reasoning and judgment are consistent. Id. at 421 (citing Cournoyer v. American Television, 83 N.W.2d 409, 411-412).

Arbitration is a highly respected method of dispute resolution which is strongly favored under the public policy of this state. The No Fault Act has an equally strong underlying double public policy to deliver No Fault benefits to the victims of injuries in motor vehicle collision and to reduce the burden of litigation on the court system of the State. Minn. Stat. § 65.42.

SUMMARY OF ARGUMENT

The District Court correctly confirmed the arbitration award that Appellant seeks to vacate. Minn Stat. §572.18 mandates that the District Courts “shall” confirm arbitration awards in the absence of a clear showing of a legal error by the arbitrator. Progressive failed to file a proper Motion to Vacate that would meet the requirements of Minn. Stat. §572.18. For that reason alone, the decision of the District Court should be affirmed. Further, Progressive’s claim of fraud admittedly has no merit in that it has admitted that it has no claim that either the Respondent or Respondent’s attorney had committed any fraud.

The District Court also correctly denied Appellant’s request for a stay since it failed to file a proper motion under M.R.C.P. §7.02. Furthermore, Appellant’s request was properly denied since their request for a stay was based on a claim with no factual basis. Finally, Appellant is not entitled to a stay as a matter of law.

Appellant, in its brief, brings forth four new issues that were never raised before the District Court. This Court, as well as the Minnesota Supreme Court have consistently held that new issues cannot be brought for the first time on appeal. Therefore, this Court need not address issues that were not brought to the District Court in a timely and proper fashion.

ARGUMENT

I.

**THE TRIAL COURT CORRECTLY CONFIRMED THE ARBITRATION
AWARD BECAUSE RESPONDENT FAILED TO FILE A PROPER
MOTION TO VACATE.**

Arbitration is a respected and honored method of dispute resolution. Appeals from the decisions of arbitrators is strictly governed by the provision of Minn. Stat. §572.01, et. Seq.

The statute mandates that the District Courts “shall” confirm arbitration awards in the absence of a clear showing of a legal error by the arbitrator. Minn. Stat. §572.18.

A. Appellant failed to file a proper Motion to Vacate.

It is undisputed that, in this case, Progressive utterly failed to file a proper Motion to Vacate that would meet the requirements of Minn. Stat. §572.18. For that reason alone, the decision of the District Court should be affirmed.

In its Order of September 6, 2005, the Court made the following finding:

1. There is no proper pleading before the Court. The issues contained within the letter sent by the Defendant do not comply with the Rules of Civil Procedure. The Rules of Civil Procedure require all such claims as those addressed in the letter to be presented in a formal pleading or motion.

2. The fraud that was alleged in Defendant’s letter requires specificity. Up until this letter, there had been no allegation that the Plaintiff had committed any act of fraud. (emphasis added).

In its supporting Memorandum, the Court further observed:

On August 8, 2005, the court found there was no legal basis to stay an arbitration award simply because Progressive filed a civil action against Alivio Chiropractic Clinic in Federal Court. The court denied the Defendant’s motion to vacate the arbitration award. It is clear that there was no reason that Progressive could not have pled with specificity the fraud that they alleged. Moreover, the record

unmistakably reflects that Progressive made a tactical decision not to use whatever information it had regarding Alivio Chiropractic Clinic at the hearing. Simply put, there was no “newly discovered evidence.” Nor is there any authority for the position that the mere filing of a civil law suit in Federal Court should imply that a virtually completed state court action should be stayed.

It is clear that Progressive now complains that the Court failed to rule on an issue that was never properly presented to the Court by proper motion pleadings.

Rule 7.02 of the Minnesota Rules of Civil Procedure requires that all motions:

Shall be in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought...

B. Appellant failed to properly allege fraud with particularity.

Under Minnesota Rule of Civil Procedure 9.02 it is even more important that fraud be pled with particularity. Westgor v. Grimm, 318 N.W.2d 56, 58 (Minn. 1982), Fitzgerald v. St. Joseph's Hospital, 221 N.W.2d 702, 703 (Minn. 1974).

Moreover, fraud must also be proven with specificity. Hutchins v. Bassin, 212 N.W. 202, 203 (Minn. 1927), Rogers v. Drewry, 264 N.W. 225, 226 (Minn. 1935), Twin Ports Oil Co. v. Whiteside, 15 N.W.2d 125, 126-127 (Minn. 1944).

Progressive does not now have standing to complain that the District Court failed to rule on an issue that was never properly presented to the Court.

C. Appellant admittedly had no factual basis for its claim of fraud.

Setting aside the issue of the lack of proper pleadings, it is also quite clear that Progressive did not have any factual or legal basis for its claim of fraud. Progressive's attorney admitted in open court that Progressive had no reason to believe that either Respondent, or his attorney, had committed any fraud. The Court, in its Order of November 28, 2005, found Progressive's actions in this matter to be totally frivolous and imposed sanctions against Progressive. The Court observed,

At the hearing on July 8, 2005, Progressive's attorney stated that he did not believe that the Plaintiff or his attorney were knowingly and voluntary active participant in the alleged fraud committed by Alivio Chiropractic. (RA-3)

* * *

It is clear to this court that Progressive's action to vacate the Arbitration award based on fraud was frivolous. The tactic employed by Progressive Insurance in this particular case totally undermines the purpose of the No Fault Act. If there is any merit to Progressive Insurance Company's allegations against Alivio Chiropractic Clinic the forum for that dispute is the federal court action not this relatively straight forward action governed by the Minnesota's No Fault statutory scheme. (RA-4)

* * *

Accordingly, it is apparent that Progressive did not properly plead any facts to support its claim of fraud for a very simple reason-it had none to plead.

II.

THE TRIAL COURT CORRECTLY DENIED APPELLANT'S REQUEST FOR A STAY OF THE PROCEEDINGS.

A. Appellant's request for a stay of the proceedings was never formally presented to the Court.

Appellant's request for a stay of the proceedings was made by letter to the Court. See A-32. Appellant never did file a formal motion in compliance with the requirements of M.R.C.P. §7.02. Respondent properly objected. See A-36. This appeal should fail on the basis of Appellant's violation of Rule §7.02 alone.

The District Court noted in its Order of September 6, 2005, that Progressive had never filed a Motion to Stay the proceedings. See language quoted above. Additionally, the Court noted in that Order that Progressive had not even paid a filing fee for any such Motion. RA-4.

B. Appellant's request for a stay was based on the false allegation of the existence of a "protective order" which prevented the disclosure of facts to support the Motion.

Appellant's request for a stay was based on the false allegation that there was a "protective order" which prevented the disclosure of facts to support the Motion to Vacate. See A-69. The falsity of that allegation became immediately quite apparent. See A-67-68.

In its Order dated July 7, 2005, the District Court denied Appellant's Motion for a continuance. See A-55.

C. Even after the fictitious "protective order" was lifted, Progressive failed to amend its Motion to assert facts to support its Motion to Vacate.

Initially, Progressive's Motion to Vacate was devoid of any factual allegations. Even after the so-called "stay" was lifted, Progressive failed to amend its pleadings to properly allege facts which would support its conclusory allegation of "fraud".

Fraud must be pled "with particularity" and proven with "convincing evidence". Twin Ports Oil Co. v. Whiteside, 15 N.W.2d 125, 126-127 (Minn. 1944). Appellant failed to do so.

D. As a matter of law, Progressive had no entitlement to a stay.

The Memorandum attached to the Court's Order of August 8, 2005, contained the following statement:

In essence, this motion to stay the arbitration award appears to be a form of pre-judgment attachment. If Progressive wishes to make a pre-judgment attachment, it must occur on the federal case, it cannot be done on an entirely separate proceeding which coincidentally happens to have a common party to the state and federal suits.

In its Order of November 28, 2005, the Court further noted,

Nor is there any authority for the position that the mere filing of a civil law suit in Federal Court should imply that a virtually completed state court action should be stayed.

**III.
APPELLANT SEEKS REVERSAL BY CLAIMING THE DISTRICT
COURT ERRED IN REGARD TO RULINGS IT DID NOT MAKE.**

All four of the issues asserted by Appellant in this appeal are classic “red herrings” in the sense that none of them was decided by the District Court. Quite the contrary, the District Court decided this case on totally different grounds. Appellant’s claims of error would appear to be an attempt a misdirection from the true issues upon which this case was decided by the District Court.

The ruling of the District Court was very simple. The District Court rejected Appellant’s Motion to Vacate because Appellant had failed to properly plead facts to support that claim. Further, Appellant’s attorney, in open court, conceded that it had no such evidence.

The District Court also rejected Appellant’s informal request for a stay on the basis of Appellant’s failure to file a formal motion as required by the Rules of Civil Procedure.

Appellant misstates the issues that are properly raised in this appeal.

A. The District Court did not decide the issue of whether it had authority to stay the proceedings.

Here, Appellant raises a “red herring” of the lowest level. Appellant falsely asserts that the District Court decided that it had no authority to stay the proceedings below. That assertion is simply false. Instead, the District Court held that Appellant had not properly filed any motion to stay the proceedings, as required by the Rules. Additionally, the District Court ruled that there was no legal or factual basis for a stay.

Contrary to Progressive's claim, the District Court never ruled that it did not have authority to stay the proceedings. In fact, the District Court did exercise its authority in that regard by staying the proceedings from May 25, 2005 until August 8, 2005. That being true, how can Appellant claim that the District Court refused to continue the stay due to a perceived lack of authority?

The basis of the District Court's holding is quite clear:

*On August 8, 2005, the court found there was no legal basis to stay an arbitration award simply because Progressive filed a civil action against Alivio Chiropractic Clinic in Federal Court. * * * Nor is there any authority for the position that the mere filing of a civil law suit in Federal Court should imply that a virtually completed state court action should be stayed. (RA-4)*

Accordingly, Progressive's claim of error, in this regard, is totally misdirected.

B. The District Court did not decide the issue of whether it could vacate a portion of the award while confirming the remainder thereof.

Again, Appellant claims error with regard to a ruling that the District Court never made. The District Court never decided the issue of whether the Court could enter a partial vacation of the award. Its decision was based on completely different grounds.

Further, this issue was never raised in the lower court by proper pleadings. It cannot be raised for the first time on appeal. This is a well established rule that has been upheld both by this Court and the Minnesota Supreme Court. Thiele v.

Stich, 425 N.W.2d 580, 582 (Minn.1988), Rouland v. Thorson, 542 N.W.2d 681, 684 (Minn. App. 1996), Minnesota Cent. R. Co. v. MCI Telecommunications Corp., 595N.W.2d 533,539 (Minn. App. 1999), Rathbun v. W. T. Grant Co., 219 N.W.2d 641, 651 (Minn. 1974); and Kelmar Corp. v. District Court of Fourth Judicial District, 130 N.W.2d 228, 233-234 (Minn. 1964).

C. The District Court did not decide whether an arbitration award could be vacated because of fraud by the medical provider in the absence of fraud by the claimant.

Here, Appellant's statement of this issue raises yet a third "red herring". This issue was never reached by the District Court because of Appellant's abject failure to plead any such facts. Since it was never raised in the lower court by proper pleadings, it cannot be raised for the first time on appeal. Thiele, 425 N.W.2d at 582. The ruling of the District Court was certainly made on other grounds.

D. The District Court did not err in failing to hold an evidentiary hearing where the pleadings did not warrant it.

Appellant here raises yet a fourth "red herring". Appellant did not properly plead fraud. Twin Ports Oil Co., 15 N.W.2d at 126-127. The fraud issue was never properly presented to the lower court. Appellant's attorney admitted in open court that it had no basis to claim any fraud on the part of the Respondent or his attorney. Appellant's suggestion that it should have been afforded an evidentiary hearing regarding a claim it never properly pled, and one that it admittedly had no evidence to support, is simply ludicrous.

Further, Appellant ducks the issue of waiver. Progressive has admitted that it never raised the claim of fraud in the arbitration. Progressive also admits that it never presented any evidence of fraud at the arbitration hearing. In fact, Progressive admits that it made a “tactical decision” not to present any such evidence at the arbitration hearing.. That being true, it is quite clear that Progressive has waived the fraud claim by its failure to assert it in a timely fashion.

In this regard, it is important to remember that Appellant does not claim that it has any “newly discovered evidence” of fraud that it has acquired since the arbitration of this matter.

CONCLUSION

This appeal should fail on both procedural and substantive grounds. The District Court found Progressive’s position to be frivolous and imposed sanctions. Appdx. This appeal has even less merit.

Progressive’s errors and omissions are replete. It failed to file a Motion to Vacate the arbitration award in the District Court which would comply with M.R.C.P. §7.02. It failed to plead fraud with particularity as required by M.R.C.P. §9.02. Now, for the first time on appeal, Progressive seeks to assert claims never properly raised in the lower court.

Further, Progressive’s claim of fraud admittedly has no merit in that it has admitted that it has no claim that either the Respondent or Respondent’s attorney had committed any fraud.

Progressive also asserts that the District Court erred in failing to grant a stay of the proceedings until the completion of an action that Progressive has instituted in Federal Court. Again, Progressive failed to file a proper motion to stay the proceedings in the lower court which would comply with the requirements of M.R.C.P. §7.02. That claim is being asserted for the first time on appeal.

Further, Progressive's claim of entitlement to a stay has absolutely no merit. Progressive claims that the mere existence of the action in Federal Court should automatically entitle it to a stay. Respondent is not a party to that action. That claim is equally frivolous.

The No Fault Arbitration statute was enacted for the simple purpose of avoiding timely and costly litigation and undue burden on the courts. Here before us, we have a prime example of a lack of respect for both the arbitration process and the litigation process. Appellant has not only decided to ignore the decision of an arbitrator, but it has also decided to avoid proper rules of procedure and law by bringing forth frivolous claims and wasting this Court's time with meritless arguments and attempting to raise new factual issues it could have properly brought before the District Court.

Dated: 12/14/05

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).