NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1845-09T2

IFA INSURANCE COMPANY,

Plaintiff-Respondent,

v.

AMERICAN TRUCKING & TRANSPORTATION
INSURANCE COMPANY,

Defendant-Appellant.

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Argued February 14, 2011 - Decided March 22, 2011

Before Judges LeWinn and Coburn.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-3113-07.

Darin Billig argued the cause for appellant (Suzanne Billig, attorney; Ms. Billig, on the brief).

Gary L. Riveles argued the cause for respondent (Dughi & Hewit, attorneys; Mr. Riveles, on the brief).

PER CURIAM

Defendant, American Trucking and Transportation Insurance Company (American Trucking), appeals from the November 13, 2009 judgment confirming an arbitration award in favor of plaintiff,

IFA Insurance Company (IFA), in the amount of $101,914.68 plus prejudgment interest and costs. American Trucking claims the judge applied the wrong standard of review to the arbitration award and that the arbitrator erred in failing to apply comparative negligence principles in determining his award. We affirm.

IFA's insured, Donika Lamcaj, was injured when her car was involved in an accident with a truck driven by Harold Mercer, which was insured by American Trucking. IFA paid personal injury protection (PIP) benefits to Lamcaj and then filed a complaint against American Trucking seeking reimbursement and requesting binding arbitration, pursuant to N.J.S.A. 39:6A-9.1.[1] American Trucking filed an answer in which it raised seventeen affirmative defenses, including comparative negligence.

[1] N.J.S.A. 39:6A-9.1 provides, in pertinent part that

> [a]n insurer . . . paying . . . [PIP] benefits . . . as the result of an accident occurring within this State, shall . . . have the right to recover the amount of payments from any tortfeasor . . . . In the case of an accident . . . involving an insured tortfeasor, the determination as to whether an insurer . . . is legally entitled to recover the amount of payments and the amount of recovery, . . . shall be made against the insurer of the tortfeasor, and shall be by agreement of the involved parties or, upon failing to agree, by arbitration.

On November 5, 2007, the judge entered an order compelling arbitration and naming an arbitrator to "decide what amount of money is owed by [American Trucking] to [IFA]." Arbitration was held on August 19, 2009. Lamcaj and Mercer testified. Both parties submitted exhibits, arbitration statements and written summations.

The arbitrator issued his decision on September 25, 2009. After reviewing the testimony and assessing the credibility of the witnesses, the arbitrator found that "Mercer operated his tractor trailer in a negligent manner and as a result, proximately caused the accident." With respect to American Trucking's request to apply comparative negligence principles, the arbitrator concluded that IFA's "claim under N.J.S.A. 39:6A-9.1 [wa]s for reimbursement and not a subrogation claim and therefore, the princip[le]s of comparative negligence d[id] not apply." The arbitrator awarded IFA $101,914.48, the total amount indicated on IFA's PIP ledger.

On September 29, 2009, IFA filed a motion to confirm the arbitration award. American Trucking filed a certification opposing the motion and seeking to vacate the award.

At oral argument on the motion, the judge asked counsel for American Trucking if she was aware of any legal support for her position that N.J.S.A. 39:6A-9.1 "requires a finding of

comparative negligence or no comparative negligence[.]" Counsel responded that she was "not aware of any." The judge determined that American Trucking had the burden to demonstrate "that there was some fraud that was committed" in the arbitration in order to vacate the award, citing N.J.S.A. 2A:24-8.

The judge entered judgment in favor of IFA on November 13, 2009, and appended a statement of reasons, noting that the "scope of judicial review of [an] arbitration award, where one party seeks to confirm the award and the other seeks to vacate it, is severely limited. The award here may be vacated 'only in [the] case[] of fraud, corruption or similar wrongdoing as provided by the arbitration statute,'" again citing N.J.S.A. 2A:24-8.

Turning to the issues raised on appeal, we concur with American Trucking that the judge applied an incorrect statute to his review of the arbitration award. N.J.S.A. 2A:24-8 applies to arbitration of collective bargaining agreements. N.J.S.A. 2A:24-1.1 provides that "[N.J.S.A.] 2A:24-1 through [N.J.S.A.] 2A:24-11 shall only apply to an arbitration of disputes arising from a collective bargaining agreement or a collectively negotiated agreement."

American Trucking contends the judge should have applied N.J.S.A. 2A:23B-23, which is found in the version of the Uniform

Arbitration Act adopted in New Jersey in 2003. N.J.S.A. 2A:23B-1 to -32; L. 2003, c. 95 (the 2003 Act). American Trucking refers particularly to the standard in that statute which provides that an arbitration award may be vacated if "an arbitrator has exceeded [his/her] powers." N.J.S.A. 2A:23B-23(a)(4). It argues that "the arbitrator exceeded his powers by issuing an award which is not recoverable under New Jersey law in that he failed to apply basic negligence principles, specifically, in failing to apply the standard of comparative negligence mandated by N.J.S.A. 2A:15-5.1."

Notwithstanding the judge's application of an inapposite statute, we are satisfied that American Trucking is not entitled to relief on this basis. A comparison of the two statutes demonstrates that they set forth essentially identical standards.

N.J.S.A. 2A:24-8 sets forth four grounds for vacating an arbitration award:

> Where the award was procured by corruption, fraud or undue means;
>
> Where there was either evident partiality or corruption in the arbitrators, or any thereof;
>
> Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent and material to the controversy,

> or of any other misbehaviors prejudicial to the rights of any party;
>
> Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.
>
> [N.J.S.A. 2A:24-8(a) to (d).]

N.J.S.A. 2A:23B-23 sets forth six grounds for vacating an arbitration award. The first three are identical in scope to N.J.S.A. 2A:24-8(a) through (c); the other three are:

> an arbitrator exceeded [his/her] powers;
>
> there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection . . . not later than the beginning of the arbitration hearing; or
>
> the arbitration was conducted without proper notice of the initiation of an arbitration . . . so as to substantially prejudice the rights of a party to the arbitration proceeding.
>
> [N.J.S.A. 2A:23B-23(a)(4) to (6).]

With respect to the grounds that would potentially be applicable to this case, the two statutes provide identical standards.

Here, the judge declined to consider the question of whether the arbitrator exceeded his powers because the judge found no basis to require the application of comparative negligence principles to the arbitration. Nor did American

Trucking provide the judge with any legal support for its position that such principles applied.

Well-established principles governing judicial review of an arbitrator's decision apply to the standards in N.J.S.A. 2A:23B-23. The 2003 Act "continues our state's long-standing policy to favor voluntary arbitration as a means of dispute resolution." Block v. Plosia, 390 N.J. Super. 543, 551 (App. Div. 2007). In other words, the same principles that governed judicial review of arbitration awards prior to the 2003 Act apply to such review of awards under that Act. Ibid.

In Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 358 (1994), the Court held that "the correct standard of review" of arbitration decisions was stated by Chief Justice Wilentz in his concurring opinion in Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479, 518-49 (1992). There, the late Chief Justice stated:

> Arbitration awards should be what they were always intended to be: final, not subject to judicial review absent fraud, corruption, or similar wrongdoing on the part of the arbitrators. . . . Whether the arbitrators commit errors of law or errors of fact should be totally irrelevant. The only questions are: were the arbitrators honest, and did they stay within the bounds of the arbitration agreement?
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> [Id. at 519 (emphasis added).]

We discern no basis to impose any different standard where, as here, arbitration is ordered by a judge rather than agreed upon by the parties. The genesis of how the arbitration came about is immaterial to the standards governing judicial review of the result.

The standard adopted in Tretina has been applied to arbitration decisions challenged under N.J.S.A. 2A:23B-23. See Manger v. Manger, 417 N.J. Super. 370, 375-77 (App. Div. 2010) (noting that judicial review of arbitration decisions "is informed by the authority bestowed on the arbitrator by the [2003] . . . Act"); Block, supra, 390 N.J. Super. at 551-52; Kimm v. Blisset, LLC, 388 N.J. Super. 14, 29-30 (App. Div. 2006) ("[n]otwithstanding the apparently broad scope of the court's powers to alter an arbitrator's award as described in the statutory language [N.J.S.A. 2A:23B-23, -24], our courts have not traditionally interpreted the statutory language broadly" (citing Tretina, supra, 135 N.J. at 355)), certif. denied, 189 N.J. 428 (2007). See also Fawzy v. Fawzy, 199 N.J. 456, 470 (2009), in which the Court noted that the provisions in N.J.S.A. 2A:23B-23(a) demonstrate "as might be expected, [that] the scope of review of an arbitration award is narrow."

The Tretina standard has specifically been held applicable to PIP arbitrations between two insurers. Selective Ins. Co. v.

Nat'l Cont'l Ins. Co., 385 N.J. Super. 62, 67 (App. Div.), certif. denied, 188 N.J. 218 (2006). "Pursuant to this standard, only in rare circumstances may a court vacate an arbitration award for public policy reasons, and errors of law or fact made by the arbitrators are not correctable." Ibid.

American Trucking contends that Selective Insurance is inapplicable because the parties in that case had agreed to submit the PIP claim to arbitration. Because American Trucking was compelled to go to arbitration by court order, it argues, the arbitration decision "is thus subject to the 'broader judicial review of public sector arbitration.'" It cites no authority for that assertion, however.

"[P]ublic sector arbitration" connotes matters involving "the public interest and welfare," Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 420, 431 (1996), such as public employment disputes. See Commc'ns Workers of Am. v. Monmouth Cty. Bd. of Soc. Servs., 96 N.J. 442, 450-51 (1984) ("in a public employment case . . . public policy demands that inherent in the arbitrator's guidelines are the public interest, welfare and other pertinent statutory criteria" (internal quotation and citation omitted)).

In Selective Insurance, we noted that "arbitration between two insurance companies, pursuant to N.J.S.A. 39:6A-9.1, does

not raise the public policy considerations that warrant broader judicial review of public sector arbitration decisions." 385 N.J. Super. at 67-68. American Trucking's argument on this point is without merit.

Affirmed.