STATE OF MICHIGAN

COURT OF APPEALS

RONALD WARD,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 13, 2001

No. 219771
Wayne Circuit Court
LC No. 96-622043-CK

Before: Zahra, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order directing arbitration of plaintiff's claim for uninsured motorist benefits. Defendant challenges the trial court's factual finding that plaintiff invoked arbitration under the terms of the parties' insurance contract. We affirm.

Plaintiff was injured in 1995 during his employment with the City of Detroit, when the vehicle he was operating was struck by a hit-and-run vehicle. Defendant, plaintiff's no-fault insurer, denied his claim for uninsured motorist benefits. Plaintiff then filed a complaint in circuit court requesting declaratory judgment. The trial court denied defendant's motion for summary disposition and ordered the matter to arbitration. On appeal, a panel of this Court remanded with instructions for the trial court to determine whether plaintiff had properly invoked arbitration pursuant to the terms of the parties' insurance contract.[1] On remand, the trial court found that a letter sent by plaintiff's attorney to defendant in October, 1995, invoked the arbitration clause of the insurance contract. Defendant appeals from that decision.

We review a lower court's factual findings for clear error. MCR 2.613(C); *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000). "'A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed.'" *Id*., quoting *Vivian v Roscommon Co Bd of Road Comm'rs*, 164 Mich App 234, 238-239; 416 NW2d 394 (1987), aff'd

[1] *Ward v Allstate Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued March 23, 1999 (Docket No. 203593), slip op. at 2.

433 Mich 511 (1989). Defendant argues that the trial court committed clear error by concluding that plaintiff invoked arbitration. We disagree.

Part V of the parties' insurance contract, governing uninsured motorist coverage, contains an arbitration clause. The pertinent portion of the policy states:

> If the insured person or **we** do not agree on that person's right to receive any damages or the amount, than at the written request of the insured person the disagreement will be settled by arbitration. A demand for arbitration must be filed within 3 years from the date of the accident, or coverage under this part will not be afforded. [Emphasis in original.]

On remand, the trial court determined that a letter sent by plaintiff's attorney to defendant in October, 1995, satisfied the policy's requirement that plaintiff submit a "written request" and "demand for arbitration." The letter stated:

> Please be advised that we have been retained by the above-mentioned individual [plaintiff] concerning injuries sustained as a result of an accident which occurred on the above-mentioned date [October 11, 1995]. Claim is hereby made for Uninsured Motorist Claim [sic].
>
> Be further advised that an attorney's lien is claimed on any amounts recovered on behalf of our client.
>
> Thank you very much for your attention to this matter.

We agree with defendant that the trial court committed clear error when it found that the above letter constituted a "written request" and "demand for arbitration." Although those terms are not defined by the insurance policy, plaintiff's letter contained no mention of arbitration. Rather, it is clear from both the letter's language and its temporal proximity to plaintiff's accident that it was intended as an initial request for uninsured motorist benefits. Moreover, defendant could not deny plaintiff's claim, paving the way for an arbitration request, until plaintiff first submitted a claim. *Morley v Automobile Club of Michigan*, 458 Mich 459, 466; 581 NW2d 237 (1998). Therefore, we conclude that the letter from plaintiff's attorney merely served as plaintiff's claim for uninsured motorist coverage, and did not constitute a "written request" and "demand for arbitration."

However, we conclude that plaintiff's circuit court complaint did satisfy the insurance contract's requirement of a "written request" and "demand for arbitration."[2] Plaintiff's complaint stated:

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[2] In its brief on appeal, defendant concedes that plaintiff filed his complaint within the three year period provided in the insurance policy. Therefore, if plaintiff's complaint qualifies as the "written request" and "demand for arbitration" under the insurance policy, then defendant has essentially conceded that such demand was timely made.

> WHEREFORE the Plaintiff is entitled to said coverage and would ask this Honorable Court to grant declaritory [sic] judgment against the Defendant together with interest, costs, and attorney fees in having to file this petition and *order the immediate scheduling of an Arbitration on the issue of the uninsured motorist claim pursuant to the language of the Defendant's contract.* [Emphasis supplied.]

Specifically, the complaint demonstrated plaintiff's desire to conduct arbitration pursuant to the language of the insurance contract. In Michigan, public policy favors arbitration over litigation in the resolution of disputes, *Omega Construction Co, Inc v Altman*, 147 Mich App 649, 655; 382 NW2d 839 (1985), because the "purpose of an arbitration agreement is to avoid protracted litigation." *City of Huntington Woods v Ajax Paving Industries, Inc (After Remand)*, 196 Mich App 71, 75; 492 NW2d 463 (1992). Arbitration clauses are liberally construed, and any doubts regarding the arbitrability of an issue should be resolved in favor of arbitration. *DeCaminada v Coopers & Lybrand, LLP*, 232 Mich App 492, 497; 591 NW2d 364 (1998); *Huntington Woods*, *supra* at 75.

We conclude that plaintiff's complaint clearly demanded arbitration of plaintiff's claim for uninsured motorist benefits, pursuant to the language of the parties' insurance contract. Our review of the record does not leave us with a firm and definite conviction that the trial court erred in its ultimate conclusion that plaintiff properly invoked arbitration, despite the court's erroneous reliance on the letter from plaintiff's attorney. This Court will not reverse a trial court's order if the trial court reached the correct decision, albeit for the wrong reason. *Smith v Goodwill Industries of West Michigan, Inc*, __ Mich App __; __ NW2d __ (Docket No. 218795, issued 12/1/00), slip op. at 5; *City of Detroit v Presti*, 240 Mich App 208, 214; 610 NW2d 261 (2000).

Defendant contends that plaintiff's complaint cannot satisfy the insurance policy's requirement of a "written request" and "demand for arbitration," under the law of the case doctrine. That doctrine makes an appellate court's decision regarding a particular issue binding on all courts of equal or subordinate jurisdiction during subsequent proceedings in the same case. *McNees v Cedar Springs Stamping Co (After Remand)*, 219 Mich App 217, 221-222; 555 NW2d 481 (1996).

Our reading of this Court's prior opinion convinces us that this Court did not decide whether plaintiff's complaint could be deemed as a "written request" and "demand for arbitration" under the parties' insurance policy. Rather, this Court decided that, if arbitration was properly invoked, it was within the province of the arbitrator to decide both the coverage issue and the amount of benefits to which plaintiff may be entitled. This Court then remanded to the trial court with instructions to "determine whether arbitration was properly invoked."[3] The law of the case doctrine applies only to issues "actually decided, either implicitly or explicitly, in the prior appeal." *Grievance Administrator v Lopatin*, 462 Mich 235, 261; 612 NW2d 120 (2000). Because this Court's prior decision remanded the case with instructions for the trial court to factually determine whether plaintiff properly invoked arbitration, that issue was not "actually

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[3] *Ward*, *supra*, slip op. at 2.

decided" in this Court's prior decision, and defendant cannot argue that the decision precludes the trial court from finding that arbitration was properly invoked. Therefore, we do not believe that the law of the case doctrine requires reversal of the circuit court's decision.

Defendant next argues that the trial court erred by denying its motion for summary disposition. Defendant argues that plaintiff's claim is prohibited by the policy provisions which prohibit recovery of uninsured motorist benefits for injuries arising out of the use of all-terrain vehicles and government-owned vehicles. Because defendant did not include this issue in the statement of issues presented, review by this Court is inappropriate. *Caldwell v Chapman,* 240 Mich App 124, 132; 610 NW2d 264 (2000); *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996). Further, given our decision that plaintiff properly invoked the insurance policy's arbitration clause, the effect of the above-mentioned contract provisions present questions which must be resolved by the arbitrator, not by the courts.[4]

Affirmed.

/s/ Brian K. Zahra
/s/ Michael R. Smolenski
/s/ Hilda R. Gage

[4] To the extent that this Court's prior decision addressed the language of plaintiff's complaint for declaratory judgment, that opinion held that the complaint did not entitle plaintiff to a judicial determination of coverage under the policy, while reserving a determination of the amount of benefits to be paid for the arbitrator. Therefore, in the event that the circuit court determined that plaintiff had properly invoked arbitration, this Court indicated that "the entirety of the parties' dispute [fell] within the jurisdiction of the arbitrator." *Ward*, *supra*, slip op. at 2.