STATE OF MICHIGAN

COURT OF APPEALS

LISA MICHELLE FROMM and EDWARD FROMM, Plaintiffs/Counter-Defendants-Appellants,	FOR PUBLICATION November 9, 2004 9:00 a.m.
v	No. 248879 Oakland Circuit Court
MEEMIC INSURANCE COMPANY, Defendant/Counter-Plaintiff-Appellee.	LC No. 2002-045339-CK Official Reported Version

Before: Murphy, P.J., and O'Connell and Gage, JJ.

O'CONNELL, J.

Plaintiffs appeal as of right the order granting defendant summary disposition under MCR 2.116(C)(10). This case arises from plaintiffs' claim for insurance benefits allegedly owed as a result of an automobile accident with an uninsured vehicle. Plaintiffs allege the accident caused Lisa Fromm to suffer a miscarriage. We reverse.

Plaintiffs' only claimed injury stemming from the November 2000 accident was the miscarriage. At the time of the accident, plaintiff was thirteen weeks pregnant. Before the accident, Lisa had not experienced any complications with the pregnancy, which was her fourth. On the day following the accident, plaintiffs' doctor was able to find the fetus's heartbeat. Tragically, when Lisa returned to her doctor on December 19, 2000, the doctor was no longer able to detect a heartbeat. Plaintiffs report that they endured a physically and emotionally difficult miscarriage that required Lisa to be hospitalized for two days, during which she underwent a dilation and curettage procedure. Lisa became pregnant again in September 2001, but suffered a miscarriage approximately eight weeks into that pregnancy. Lisa became pregnant again in December 2001, and, as of her deposition in August 2002, she had not experienced any complications with that pregnancy.

Plaintiffs notified defendant of the accident and asserted that Lisa had suffered a compensable injury under the uninsured motorist provisions of the insurance policy. Plaintiffs sought arbitration under their insurance policy with defendant. After defendant failed to name an arbitrator, plaintiffs filed their complaint asserting that defendant was in breach of the policy and seeking an order to enforce arbitration. Defendant responded, in part, that Lisa's injuries were

insufficient to invoke coverage because Lisa had not sustained a serious impairment of an important body function. The trial court agreed, finding that there was no evidence that Lisa's miscarriage affected her ability to lead a normal life. Plaintiffs now appeal the court's grant of summary disposition in favor of defendant.

Plaintiffs first argue that the impairment suffered by Lisa is compensable under the terms of the policy. We do not reach this issue because our interpretation of the policy, and our application of precedent lead us to conclude that an arbitrator must determine whether Lisa has suffered a compensable injury. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The insurance policy states that defendant will pay damages for bodily injury that is sustained by the insured person and "results in death, serious impairment of body function or permanent serious disfigurement." "Serious impairment of body function" is defined in the policy as "an objectively manifested injury to an important body function which substantially affects an insured person's general ability to lead a normal life." The policy does not mention the terms "covers" or "coverage" in conjunction with the injury standard. Nevertheless, defendant argues that whether Lisa's injury rises to the level of a serious impairment is an issue of coverage under the uninsured motorist provision. It argues that the policy excludes from arbitration matters involving the policy's coverage. The policy states: "Unless otherwise agreed by express written consent of both parties, disagreements concerning insurance coverage, insurance afforded by the coverage, whether or not a motor vehicle is an uninsured motor vehicle or the timeliness of a Demand for Arbitration, are not subject to arbitration . . . ."

The existence of an arbitration agreement and the enforceability of its terms are judicial questions for the court, not the arbitrators. *Huntington Woods v Ajax Paving Industries, Inc* (*After Remand*), 196 Mich App 71, 74; 492 NW2d 463 (1992). "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *McIntosh v Groomes*, 227 Mich 215, 218; 198 NW 954 (1924). "To ascertain the arbitrability of an issue, [a] court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract." *Huntington Woods*, *supra* at 74-75. The court should resolve all conflicts in favor of arbitration. *Id*. at 75. However, a court should not interpret a contract's language beyond determining whether arbitration applies and should not allow the parties to divide their disputes between the court and an arbitrator. *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 15, 17-18; 557 NW2d 536 (1997). Dispute bifurcation defeats the efficiency of arbitration and considerably undermines its value as an acceptable alternative to litigation.[1] Moreover, contract provisions that assign new roles to courts and arbitrators

[1] The dissent's reasoning amounts to an approval of a bifurcated process to resolve the extent of the injury suffered by plaintiff. In this case of a material fact issue regarding serious impairment of a body function, the dissent's process would require a jury trial in the state court and then a referral to arbitration to resolve the balance of the issues. While that process is feasible, it is definitely a bifurcation of judicial responsibilities between courts and the arbitrator and, in essence, renders the entire process duplicative. While defendant insurance company is free to

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impermissibly usurp the authority of the court rules and the arbitration statutes. For example, we will not enforce a provision that gives courts the authority to determine the legal effect of a contract but requires the arbitration of damages and other factual issues. *Id*. When faced with a potentially improper contract provision, however, we always attempt to interpret the provision in a way that renders it legally acceptable and enforceable according to the presumed intent of the parties. *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588, 599; 648 NW2d 591 (2002).

Given the vagueness of the term "coverage," defendant insurance company argues that the extent of Lisa's injury determines whether the injury is "covered." Therefore, according to defendant's interpretation of the contract, a court should decide whether the injury rises to the level of a serious impairment as a matter of "coverage." However, such an interpretation would render the arbitration provision a nullity because all disputes involving the payment of benefits could foreseeably fall within the ambit of "coverage." One can easily envision the insurance company arguing that the policy does not "cover" a particular medical procedure, a certain type of suffering, or a particular injury, whether a miscarriage, whiplash, or a broken ankle. These are traditionally aspects of damages and contract interpretation left to an arbitrator, and we are not persuaded that the parties intended the term "coverage" to encompass so much. This interpretation has the additional disadvantage of allowing the parties an avenue to get their more technical legal arguments before the court rather than requiring them to submit the entire dispute to arbitration. The insurance company used this avenue when it submitted the interpretation of "serious impairment" to the court rather than the arbitrator. However, it also left open the possibility that it could return to arbitration to determine damages if the court found a serious impairment. We eschew any interpretation that permits the division of a dispute.

Another viable interpretation is that the term "coverage" means the formation and existence of the contract and its various aspects, such as policy life, limits, and riders. Under this interpretation, whether the policy affords "coverage" to an individual strictly depends on the policy's language and would not require detailed articulation and resolution of issues underlying the instant dispute. Furthermore, a court's determination of the existence of "coverage" in the narrow sense simply reinforces the court's role as gatekeeper to the arbitration process and leaves the actual resolution of particular disputes with the arbitrator—just as the parties intended. This interpretation leaves the arbitration provision intact and avoids the improper bifurcation of judicial responsibilities between courts and arbitrators.[2] Therefore, we adopt this interpretation of the term "coverage" as it pertains to this policy.

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select the process used to resolve the conflict, it should not be allowed to bifurcate the process to the extent that it drives up the cost of litigation, wastes judicial resources, and renders arbitration a backstop for failed litigation. Litigants must be required to select only one dispute resolution process. What parties may not do is reach private agreements to arbitrate that dictate a role for public institutions. *Brucker, supra* at 17.

[2] If we did not read the policy's "coverage" language narrowly, the policy would presumably allow the insurance company to determine all issues of liability in court, and then, if found liable, turn its back to the jury and head for arbitration to determine damages. This interpretation would violate the rule against dividing contract disputes between forums.

In this case, the issue is not whether the parties contracted for insurance coverage, but whether Lisa's injuries rise to a level that warrants the payment of benefits. This is a matter of contract interpretation, so we leave it to the arbitrator. *Brucker*, *supra*.

Reversed and remanded for an order sending the parties to arbitration. We do not retain jurisdiction.

Gage, J., concurred.

/s/ Peter D. O'Connell
/s/ Hilda R. Gage