

STATE OF MICHIGAN
COURT OF APPEALS

NORTH POINTE INSURANCE COMPANY,

Plaintiff-Appellant,

UNPUBLISHED
August 2, 2012

V

No. 304118
Wayne Circuit Court
LC No. 09-016324-CK

DAISY L. SIMPSON, Personal Representative of
the Estate of James Simpson, and ANGELA
WILLIAMS,

Defendants-Appellees.

Before: MURRAY, P.J., and FORT HOOD and BORRELLO, JJ.

PER CURIAM.

Plaintiff, North Pointe Insurance Company, appeals by right from a judgment in favor of defendant, Angela Williams.¹ We affirm.

After a fire burned the insured premises, the parties disputed the scope and amount of coverage. Plaintiff commenced this litigation to obtain court assistance in the appraisal and umpire process, MCL 500.2833(1)(m). The parties selected their appraisers, and the trial court selected the umpire. The trial court conducted an evidentiary hearing and determined that five items were outside the scope of insurance coverage. The parties then submitted their positions to the umpire who utilized the cost less depreciation approach to calculate the award. After the umpire reached its decision, the parties stipulated to a judgment in favor of defendant in the amount of \$118,803.93. Plaintiff filed a claim of appeal from the stipulated judgment. That same day, plaintiff also filed a motion to set aside the judgment. However, the trial court concluded that it lacked jurisdiction to address the merits of the motion in light of the pending

¹ Initially, the litigation was commenced against Daisy L. Simpson, as Personal Representative of the Estate of James Simpson. Later, there was a substitution of Daisy L. Simpson, an individual, and Angela Williams, as defendants because they acquired the interest in the subject property. After Daisy Simpson died, the trial court entered a nunc pro tunc order reflecting that defendant Angela Williams was substituted for Simpson as of the date of the evidentiary hearing, July 27, 2010. At the evidentiary hearing, Angela Williams testified that her full name was Angela Williams Carter.

claim of appeal. Approximately four months later, plaintiff filed a motion for “correction of errors,” seeking to incorporate the documentation from the umpire’s hearing into the lower court record. The trial court apparently denied the motion.² Plaintiff’s motion to expand the record on appeal was denied by this Court.³

Plaintiff first alleges that the judgment must be reversed because of manifest mistake and an error of law. We disagree. As an initial matter, we note that this issue is not preserved for resolution. To preserve an issue for appellate review, it must be raised, addressed, and decided in the trial court. *Michigan’s Adventure, Inc v Dalton Twp*, 290 Mich App 328, 330 n 1; 802 NW2d 353 (2010). “The purpose of the appellate preservation requirements is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice.” *People v Mayfield*, 221 Mich App 656, 660; 562 NW2d 272 (1997). The Michigan Court of Appeals serves as a court of review principally charged with the responsibility of correcting errors and generally does not address unpreserved issues. *Burns v City of Detroit (On Remand)*, 253 Mich App 608, 615; 660 NW2d 85 (2002). Unpreserved claims are reviewed for plain error affecting substantial rights. *Huntington Nat’l Bank v Ristich*, 292 Mich App 376, 381; 808 NW2d 511 (2011).

When the insurance award is within the policy limits and within the conflicting estimates of the parties, the trial court’s factual findings cannot be deemed clearly erroneous. *Riggs v Fremont Mut Ins Co*, 85 Mich App 203, 205-206; 270 NW2d 654 (1978). The appraisal and umpire process was established to promptly address a claim, effectively constitutes arbitration, and limits judicial review:

This Court has referred to the appraisal process mandated by statute and contained in defendant’s homeowner’s policy as a “substitute for judicial determination of a dispute concerning the amount of a loss,” which is “a simple and inexpensive method for the prompt adjustment and settlement of claims.” This appraisal process has been held to be the product of a common-law arbitration agreement rather than statutorily mandated arbitration, and thus is not subject to as strict a standard of review as statutorily mandated arbitration. Judicial review is limited to instances of bad faith, fraud, misconduct, or manifest mistake. . . . Matters of an insurance policy’s coverage are generally for a court and not for appraisers. [*Auto-Owners Ins Co v Kwaiser*, 190 Mich App 482, 486; 476 NW2d 467 (1991) (citations omitted).]

Plaintiff contends that the umpire committed an error of law or manifest mistake in its selection of the appraisal method because it was depreciation based and failed to take into account factors such as obsolescence, non-use, and market conditions. Because plaintiff failed to

² Plaintiff asserts that the trial court denied the motion. However, we could not locate any order in the lower court file.

³ *North Pointe Ins Co v Estate of James Simpson*, unpublished order of the Court of Appeals, issued November 7, 2011 (Docket No. 304118).

preserve a record of the umpire's proceeding in the lower court, it is unknown if plaintiff requested a different methodology than the one applied by the umpire. However, to determine true cash value or fair market value, the courts have found the cost less depreciation approach is an acceptable and reliable method. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991). The umpire employed a method acceptable to the courts in reaching its award. Accordingly, this claim of error does not entitle plaintiff to appellate relief. *Ristich*, 292 Mich App at 38.⁴

Lastly, plaintiff argues that the trial court should not have permitted the umpire to address the issue of soot damage, and the release of this issue to the umpire was plain error.⁵ We disagree. A trial court's factual findings are reviewed for clear error, but legal conclusions are reviewed de novo. See *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130; 743 NW2d 585 (2007). A review of the evidentiary hearing transcript reveals that plaintiff's forensic engineer testified that soot damage could be visible to the naked eye as well as tested with chemicals. Defendant testified that she was aware of the conditions before and after the fire, and she observed soot damage in light of the change of color of the walls. The trial court also observed photographs⁶ and concluded that they showed evidence of soot, and therefore, allowed the issue to be presented to the umpire. The trial court resolved the conflicting testimony in favor of defendant. On this record, we cannot conclude that the trial court's factual finding was clearly erroneous. *Id.*

Affirmed. Defendant, the prevailing party, may tax costs. MCR 7.219.

/s/ Christopher M. Murray

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

⁴ At oral argument, plaintiff asserted that the recent decision in *Evanston Ins Co v Cogswell Props, LLC*, ___ F3d ___ (CA6, 2012), requires reversal. We reject that argument for two reasons. First, as plaintiff conceded, federal court decisions are not binding on how we interpret our own state law. Second, the *Evanston Ins Co* Court upheld the trial court's vacating of the umpire award because the umpire used two different valuation methods to determine actual cash value when the contract called for a single consistent definition. *Evanston Ins Co*, slip op at 19. The umpire in our case utilized one valuation method.

⁵ Plaintiff's second issue on appeal challenged defendant's appraiser. However, plaintiff conceded in its brief on appeal that it could not substantiate this issue because the materials to support this assertion were not preserved in the lower court record. Therefore, plaintiff is not entitled to relief.

⁶ The photographs were not contained in the lower court record.