STATE OF MICHIGAN

COURT OF APPEALS

DEAN ALTOBELLI,

Plaintiff-Appellant,

v

MICHAEL W. HARTMANN, MICHAEL P. COAKLEY, ANNA M. MAIURI, JOSEPH M. FAZIO, DOUGLAS M. KILBOURNE, JOHN D. LESLIE, and JEROME R. WATSON,

Defendants-Appellees.

UNPUBLISHED
May 21, 2020

No. 348953
Ingham Circuit Court
LC No. 12-000635-CB

DEAN ALTOBELLI,

Plaintiff-Appellant,

v

MILLER, CANFIELD, PADDOCK AND STONE, PLC,

Defendant-Appellee.

No. 348954
Ingham Circuit Court
LC No. 18-000545-CB

Before: CAVANAGH, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff, Dean Altobelli, appeals by right the trial court's order confirming an arbitration award in favor of defendant Miller, Canfield, Paddock and Stone, PLC (the firm) in Docket No. 348953, and appeals by right the same order in favor of individual defendants Michael W. Hartmann, Michael P. Coakley, Anna M. Maiuri, Joseph M. Fazio, Douglas M. Kilbourne, John D. Leslie, and Jerome R. Watson, who are the managing members of the firm, in Docket No.

348954.[1] The arbitration panel concluded that plaintiff was not entitled to relief because he voluntarily withdrew from his membership with the firm and had not sufficiently proved proximate cause or the amount of damages. Because the trial court properly determined that the panel's decision rested in part on issues of proximate cause and damages, which were beyond the scope of judicial review, we affirm.

I. FACTUAL BACKGROUND

In 2010, plaintiff accepted a position as an intern with the University of Alabama's football program. After unsuccessful attempts to negotiate a leave of absence from the firm, plaintiff proceeded with his internship at the University. Plaintiff requested an expulsion vote from the firm, but the firm deemed him to have voluntarily withdrawn from his membership and declined to conduct a vote.

Plaintiff ultimately sued the firm and managing members on the basis that he had not been expelled from the firm and had not voluntarily withdrawn from the firm. Initially, the trial court determined that plaintiff was not entitled to an expulsion vote, but this Court reversed on the basis that whether plaintiff had voluntarily withdrawn from the firm was a question of fact.[2] The Michigan Supreme Court reversed on the basis that an arbitration clause in the firm's operating agreement was binding, and this case was returned to the trial court.[3]

The arbitration panel concluded that plaintiff had voluntarily withdrawn his membership from the firm, and regardless, that plaintiff had not sufficiently proven that defendants' conduct—not his own conduct—proximately caused any damages, and, further, that plaintiff's proofs on damages were speculative. Plaintiff filed a motion to vacate the award before the trial court on the basis that the award contained legal errors in its interpretation of former MCL 450.4509 (concerning voluntary withdrawal from a limited liability company) and its proximate cause and damages determinations, and defendants filed a motion to confirm the award on the basis that the panel had not made an error of statutory construction and its proximate cause and damages decisions were unreviewable. The trial court confirmed the award, agreeing with defendants on both points.

II. STANDARDS OF REVIEW

"This Court reviews de novo a circuit court's decision whether to vacate an arbitration award." *TSP Servs, Inc v Nat'l-Std, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2019) (Docket No. 342530, decided 9/27/19); slip op at 2. A court may only review an arbitrator's decision for errors of law and may not review the arbitrator's factual findings or decisions on the merits. *Id*. When determining whether an error of law exists, this Court must review " 'the face of the award itself.' " *Id*., quoting *Washington v Washington*, 283 Mich App 667, 672; 770 NW2d 908 (2009).

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[1] The separate cases were consolidated when they were transferred to the business court.

[2] *Altobelli v Hartmann*, 307 Mich App 612, 640; 861 NW2d 913 (2014), rev'd in part and vacated in part 499 Mich 284 (2016).

[3] *Altobelli v Hartmann*, 499 Mich 284, 306; 884 NW2d 537 (2016).

Even if the arbitrator unambiguously committed an error of law, the courts will not necessarily interfere with the arbitration award. See *Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407, 425; 331 NW2d 418 (1982). Rather, the courts examine whether arbitrators "exceeded their powers" by disregarding controlling legal principles or the material terms of the parties' arbitration contract. *Id*. at 433-434. An arbitration award should only be vacated if it contains an error of law "so substantial that, but for the error, the award would have been substantially different." *Collins v Blue Cross Blue Shield of Mich*, 228 Mich App 560, 567; 579 NW2d 435 (1998). However, arbitrators are primarily factfinders rather than arbiters of law, and arbitration inherently lends itself poorly to review of arbitrators' factual determinations. *Gavin*, 416 Mich at 429, 444. "To that extent, judicial review of an arbitrator's decision is very limited; a court may not review an arbitrator's factual findings or decision on the merits." *Port Huron Area Sch Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986).

III. SCOPE OF REVIEW

Plaintiff argues that the trial court erred by affirming the arbitration panel's ruling on the basis that plaintiff had not proved proximate cause and damages because the panel's decisions were contrary to the law. We conclude that the panel did not erroneously apply the law when making these determinations, and the trial court did not err when it found that the determinations were not reviewable.

First, plaintiff argues that the arbitration panel committed an error of law when it based its decision on a lack of proximate cause because proximate cause is not an element of conversion. We disagree. Proximate cause is an aspect of comparative fault, which applies to all at-fault conduct.

A statutory defense to liability is "comparative fault," which means that the plaintiff was the proximate cause of his or her own damages. *Lamp v Reynolds*, 249 Mich App 591, 601; 645 NW2d 311 (2002). The comparative fault statute applies to "all at-fault conduct, not just negligence[.]" *Id*. at 602. The trier of fact assesses relative fault. MCL 600.2957(1). We do not believe there is anything surprising about holding persons accountable for their own conduct.

In this case, the panel found that regardless of whether former MCL 450.4509 applied, plaintiff had not satisfied his burden to prove that the firm's conduct, rather than his own conduct, damaged him. The panel noted that plaintiff had presented "a number of different legal theories." Accordingly, even if conversion was one of those theories, nothing on the face of the award indicates that conversion was the only theory that the panel considered. Regardless, the parties' comparative fault was a defense to all conduct, not merely negligent conduct. There is no basis from which to conclude that the arbitration panel wrongly applied the law when it held that plaintiff had not shown that defendants—not plaintiff—were the proximate cause of plaintiff's damages.

Because the amount of relative fault is a question of fact for the jury, the trial court properly concluded that it was not able to review this determination.[4]

Second, plaintiff argues that the arbitration panel erred by holding that the speculative nature of his damages barred recovery because a party need not prove damages with particularity. Again, the trial court properly concluded that it was not able to review this issue because a review of the issue would require the court to weigh the evidence before the arbitration panel.

Speculative damages may not be recovered in a tort action. *Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 96; 706 NW2d 843 (2005). Damages are not speculative simply because they cannot be precisely determined. *Id*. However, when the nature of the case permits only estimated damages, "[q]uestions regarding what damages may be reasonably anticipated are issues better left to the trier of fact." *Id*. at 96-97.

The panel noted that plaintiff had not proved that he would have survived an expulsion vote in 2010, and after July 2010, how much compensation plaintiff would have been entitled to was uncertain because plaintiff did not bill any time after July 2010. A review of the panel's findings would require going beyond the law to determine the weight of the evidence that plaintiff presented regarding estimated damages. However, a court may only review the arbitration panel's decision for legal errors on the face of the award. *TSP Servs*, ___ Mich App at ___; slip op at 2. Accordingly, the trial court did not err when it held that this issue was not reviewable.

The arbitrator's factual finding on proximate cause and damages resolved plaintiff's case regardless of its interpretation of former MCL 450.4509. As noted, damages and causation are generally essential elements of any claim. Even if plaintiff were entitled to an expulsion vote on the basis that the firm could not deem that he voluntarily withdrew, the arbitration panel found that plaintiff failed to show a causal link between the absence of an expulsion vote and any damages plaintiff may have suffered. Because there is nothing legally improper about making such a factual determination, and we cannot otherwise review such a factual finding, it is unnecessary for us to engage in any statutory interpretation. Again, we find nothing novel or extraordinary about this conclusion, so we find plaintiff's predicted ensuing destruction of LLCs in Michigan highly unlikely.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Amy Ronayne Krause

[4] Plaintiff argues that the panel's proximate cause determination rested on the validity of its voluntary withdrawal determination. This statement is contrary to the panel's statement. And while this Court should not speculate about an arbitrator's mental path, see *Washington*, 283 Mich App at 672, we note that it does not necessarily follow that defendants were comparatively less at fault than plaintiff only if it was proper for defendants to deem that plaintiff voluntarily withdrew.