STATE OF MICHIGAN

COURT OF APPEALS

ALICE JENKINS,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION,

Defendant-Appellee.

UNPUBLISHED
January 13, 2022

No. 355452
Wayne Circuit Court
LC No. 17-016141-NF

Before: BOONSTRA, P.J., and CAVANAGH and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order confirming an arbitration award. On appeal, plaintiff challenges the September 17, 2019 order granting defendant Suburban Mobility Authority for Regional Transportation's (SMART) motion to strike and exclude claims at arbitration.[1] Plaintiff argues that the trial court erred when it decided whether she could arbitrate claims that she assigned to her medical providers because those claims were governed by the parties' arbitration agreement. Thus, plaintiff contends, the trial court's ruling was against the contractual terms of the parties' agreement. For the reasons set forth below, we affirm.

I. BACKGROUND

Plaintiff asserted a claim for unpaid personal injury protection (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., for the treatment of the injuries she sustained in a motor vehicle accident while boarding a bus operated by defendant. During the trial court proceedings, it was discovered that plaintiff had assigned her rights to receive PIP benefits to the following providers:

[1] A related appeal between plaintiff and defendant, originating from the same lower court case number, was previously dismissed by this Court for lack of jurisdiction in 2019. *Jenkins v SMART*, unpublished order of the Court of Appeals, entered October 23, 2019 (Docket No. 350789).

(1) Van Dyke Spinal Rehabilitation Center; (2) Michigan Center for Physical Therapy; (3) Michigan Head & Spine Institute; (4) Novi Surgery Center; and (5) Platinum Anesthesia.

The parties entered into an arbitration agreement, and the trial court dismissed the case but retained limited jurisdiction regarding the arbitration. At arbitration, plaintiff attempted to assert claims for PIP benefits that she assigned to the earlier mentioned medical providers. Failing to resolve this issue, the arbitration panel adjourned the arbitration hearing, and defendant moved in the trial court to exclude those claims from arbitration. Defendant argued that the trial court was authorized to hear the motion because it was brought under MCR 3.602, which allows trial courts to hear actions involving issues subject to arbitration if a party makes such a motion. Defendant further argued that the assigned claims were beyond the scope of the arbitration agreement. Conversely, plaintiff argued that the trial court lacked jurisdiction to entertain defendant's motion because the issue of whether plaintiff could bring the assigned claims in arbitration was one that the arbitration panel should exclusively decide, given that the parties entered into a binding arbitration agreement. The trial court disagreed with plaintiff and granted defendant's motion.

The parties then attended another arbitration hearing, and the trial court confirmed the resulting arbitration award. This appeal followed.

II. STANDARD OF REVIEW

"Whether a particular issue is subject to arbitration is . . . reviewed de novo." *Altobelli v Hartmann*, 499 Mich 284, 295; 884 NW2d 537 (2016). Since arbitration is a matter of contract, contract principles apply to the interpretation of an arbitration agreement. *Beck v Park West Galleries, Inc*, 499 Mich 40, 45; 878 NW2d 804 (2016). The interpretation or legal effect of contractual language in an arbitration agreement is reviewed de novo. See *Shah v State Farm Mut Auto Ins Co*, 324 Mich App 182, 196; 920 NW2d 148 (2018).

Additionally, "[t]his Court reviews questions of statutory interpretation de novo." *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 470; 719 NW2d 19 (2006). This Court also reviews questions regarding "[t]he proper interpretation and application of a court rule" de novo. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009).

III. DISCUSSION

A. TRIAL COURT JURISDICTION

Plaintiff argues that the parties' arbitration agreement exclusively authorized the arbitration panel to decide all factual and legal claims, defenses, and relevant issues related to plaintiff's claims for PIP benefits. Thus, plaintiff contends, the trial court lacked jurisdiction to decide whether some of the PIP claims involved in this case should be excluded from arbitration. Defendant, on the other hand, argues that the trial court could decide issues regarding the scope of the arbitration agreement. In other words, defendant argues that the trial court could decide whether certain claims were beyond the scope of the arbitration agreement. We agree with defendant.

MCR 3.602 governs the trial court's authority with respect to arbitration, stating, in relevant part:

> **(A) Applicability of Rule**. Courts shall have all powers described in MCL 691.1681 *et seq*., or reasonably related thereto, for arbitrations governed by that statute. The remainder of this rule applies to all other forms of arbitration, in the absence of contradictory provisions in the arbitration agreement or limitations imposed by statute, including MCL 691.1683(2).
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> **(B) Proceedings Regarding Arbitration**
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> (1) A request for an order to compel or to stay arbitration or for another order under this rule must be by motion, which shall be heard in the manner and on the notice provided by these rules for motions. If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions.
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> * * *
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> **(C) Action Involving Issues Subject to Arbitration; Stay**. Subject to MCR 3.310(E), an action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or a motion for such an order has been made under this rule. If the issue subject to arbitration is severable, the stay may be limited to that issue.

Relatedly, the Uniform Arbitration Act, MCL 691.1681 *et seq*., governs arbitrations in this state agreed to after July 1, 2013. MCL 691.1683(1). MCL 691.1686 describes the validity of an agreement to arbitrate:

> (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.
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> (2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.
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> (3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.
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> (4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Plaintiff argues that the issue of whether her claims, which she assigned to various medical providers, should be subject to arbitration was exclusively an issue for the arbitration panel to decide. This argument is meritless. Under MCL 691.1686(2), "[t]he court shall decide whether . . . a controversy is subject to an agreement to arbitrate." Our Supreme Court recently reaffirmed this principle in *Lichon v Morse*, ___ Mich ___, ___; ___ NW2d ___ (2021) (Docket Nos. 159492; 159493); slip op at 10 (holding that the issue of "whether a dispute is subject to arbitration is for a

court to determine"). In this case, defendant challenged whether some of plaintiff's claims were subject to the arbitration agreement by bringing a motion to strike in the trial court under MCR 3.602(B)(1). Under that court rule, a party may bring a motion to stay arbitration "or for another order under this rule." MCR 3.602(B)(1). Moreover, MCR 3.602(A) specifically states the trial court has the powers enumerated in the Uniform Arbitration Act, one of which permits the trial court to decide the issue of whether a controversy is subject to an arbitration agreement. MCL 691.1686(2). Therefore, the trial court had jurisdiction to decide whether plaintiff's claims in dispute—the "controversies"—were subject to the arbitration agreement.

B. ARBITRABILITY OF PLAINTIFF'S CLAIMS

Plaintiff next argues that the arbitrability of the claims that she assigned to her medical providers should have been decided by the arbitration panel. In other words, plaintiff argues that on the merits, the trial court erred by ruling that the claims in dispute were not subject to the arbitration agreement. We disagree.

As a general rule, this state favors arbitration, *Altobelli*, 499 Mich at 295, citing *Detroit v A W Kutsche*, 309 Mich 700, 703; 16 NW2d 128 (1944), but "a party cannot be required to arbitrate an issue which it has not agreed to submit to arbitration," *Altobelli*, 499 Mich at 295 (cleaned up). In deciding whether a dispute is arbitrable, this Court must "avoid analyzing the substantive merits of the dispute," because if the dispute is arbitrable, "the merits of the dispute are for the arbitrator." *Id.* at 296 (quotation marks and citations omitted). In deciding whether a controversy is subject to a contractual agreement to arbitrate, " 'the 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.' " *Registered Nurses v Hurley Med Ctr*, 328 Mich App 528, 536; 938 NW2d 800 (2019), quoting *Madison Dist Pub Sch v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001). "Any doubts regarding the arbitrability of an issue should be resolved in favor of arbitration." *Registered Nurses*, 328 Mich at 536 (citation omitted).

Plaintiff argues that under the arbitration agreement, the arbitration panel had the power to decide legal and factual issues as to what benefits were due and owing. Thus, the arbitration panel should have decided whether plaintiff could assert the claims in dispute during arbitration. This argument is meritless. Once again, to decide whether a disputed claim is subject to a contractual agreement to arbitrate, this Court must consider: " '[W]hether 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.' " *Id.* (citation omitted). As to the first consideration, it is undisputed that the parties executed an arbitration agreement on March 21, 2019, related specifically to the claims underlying this case.

Next, this Court must consider whether the disputed claims are arguably within the scope of the arbitration agreement, or whether they are expressly exempt from arbitration by the arbitration agreement. See *id.* Paragraph 1 of the arbitration agreement states as follows:

> The parties hereby agree to submit all factual and legal claims, defenses, and relevant issues relating to Plaintiff's claim for personal protection insurance (PIP) benefits arising out of an incident occurring on April 24, 2017 while Plaintiff

> Jenkins was occupying a SMART bus, which is the subject of Wayne County Circuit Court Case No. 17-016141-NF, to independent binding arbitration.

Paragraph 14 of the arbitration agreement also articulates, in relevant part, the issues to be addressed at the arbitration hearing:

> a. the contested issues to be decided at the arbitration hearing are whether Plaintiff Jenkins is entitled to personal protection insurance (PIP) benefits and the amount of any such benefits pursuant to MCL 500.3101 *et seq*. under the facts and applicable law. The type and amount of benefits which may be awarded shall be governed by the provisions of Paragraphs 6 and 7 of this Agreement and the high/low agreement of the parties;
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> * * *
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> c. the arbitrators shall make their decisions based upon all relevant factual, causal relationship, and legal issues relating to liability and damages in accordance with applicable laws of the State of Michigan and determine the applicability of the claims and defenses presented by the parties.

Relatedly, Paragraph 6 of the arbitration agreement explicitly lists the claims to be submitted for the arbitration panel's consideration, and states, in relevant part:

> a. all medical expenses, hospital expenses, physician expenses, surgical expenses, chiropractic expenses, diagnostic testing expenses, radiology expenses, therapy expenses, injection expenses, medical supply/equipment expenses, medication expenses, transportation expenses, mileage expenses, medical liens and requests for reimbursement by medical providers, health insurers, Medicaid, Medicaid health plans, Medicare or other entities (except those providers who have filed their own lawsuits or intervened into the subject lawsuit as of the date of this Agreement, including but not limited to Modern Luxe Transportation, Inc., Novi AA'S, LLC, and Wook Kim, M.D., P.C. d/b/a Farmbrook Interventional Pain and EMG), and all other medical expenses and allowable expenses incurred within the meaning of MCL 500.3105 and MCL 500.3107(1)(a) through March 15, 2019[.]

The claims in dispute are plaintiff's PIP claims regarding treatment provided by: (1) Van Dyke Spinal Rehabilitation Center; (2) Michigan Center for Physical Therapy; (3) Michigan Head & Spine Institute; (4) Novi Surgery Center; and (5) Platinum Anesthesia. Paragraph 1 of the arbitration agreement limits its scope to claims and issues the parties submit, "relating to Plaintiff's claim for personal protection insurance (PIP) benefits arising out of an incident occurring on April 24, 2017." It is undisputed the treatments from the identified medical providers were for injuries plaintiff sustained in that motor vehicle accident. The question is whether PIP claims for those treatments are subject to the arbitration agreement, given that plaintiff executed an assignment of rights form for each provider, assigning her rights to collect PIP benefits to the providers.

Paragraphs 1 and 14 specifically allows the *parties* (i.e., plaintiff and defendant) to submit claims and defenses related to *plaintiff's* overall claim for PIP benefits, and states that the contested issues include whether *plaintiff* is entitled to PIP benefits. Moreover, Paragraph 6 explicitly excludes from arbitration all claims related to providers who have already brought their own

lawsuits or intervened in this lawsuit. Since the arbitration agreement: (1) allows the parties to submit claims and defenses; (2) states that the issues subject to arbitration include whether plaintiff is entitled to PIP benefits; and (3) exempts claims of medical providers that have already proceeded against defendant on their own accord, the most reasonable interpretation of the arbitration agreement is that it only covers all PIP claims that plaintiff could bring related to the motor vehicle accident. If the parties intended to subject any and all claims related to the underlying motor vehicle accident to arbitration regardless of whether those claims were possessed by plaintiff, the arbitration agreement would not specifically limit the contested issues to whether and to what extent plaintiff herself was entitled to PIP benefits. Therefore, the arbitration agreement governs claims that plaintiff herself may bring for PIP benefits.

To that end, plaintiff cannot arbitrate the claims related to the treatment provided by the identified medical providers because those claims are no longer hers to maintain. It is undisputed that plaintiff executed respective assignment of rights forms to the five medical providers at issue. It is also undisputed that the assignment of rights forms stated that plaintiff assigned all of her rights to receive or collect PIP benefits for the services rendered by the medical providers. Under *Shah*, 324 Mich App at 197, plaintiff was permitted to assign her claims for PIP benefits to her medical providers. Once plaintiff assigned her rights, however, the medical providers exclusively obtained those rights. See *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 412; 875 NW2d 242 (2015) (explaining that an "assignment vests in the assignee all rights previously held by the assignor"). Since plaintiff assigned her rights to collect PIP benefits to the medical providers at issue in this case, plaintiff possesses no rights with respect to those claims. Thus, the disputed claims are not subject to arbitration agreement. *Registered Nurses*, 328 Mich App at 536. In other words, because the arbitration agreement governs only those claims that plaintiff herself may maintain for PIP benefits, and because the claims in dispute are no longer maintained by plaintiff herself but instead by the medical providers, the claims are not governed by the arbitration agreement.

IV. CONCLUSION

The trial court correctly ruled that the claims in dispute were not subject to the arbitration agreement. We affirm.

/s/ Mark J. Cavanagh
/s/ Michael J. Riordan

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BOONSTRA, P.J. (*concurring*)

I fully concur. I write separately simply to expand a bit upon my rationale. The parties' arbitration agreement strikes me as less than a model of clarity in some respects. Specifically, it provides in part:

> 1. The parties hereby agree to submit *all factual and legal claims, defenses, and relevant issues relating to Plaintiff's claim for personal protection insurance (PIP) benefits* arising out of an incident occurring on April 24, 2017 while Plaintiff Jenkins was occupying a SMART bus, which is the subject of Wayne County Circuit Court Case No. 17-016141-NF, to independent binding arbitration.
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> * * *
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> 6. . . . The *following claims shall be submitted for the arbitrator's consideration*, deliberation, and decision and shall form the basis of the arbitration award . . . :
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> > a. *all* medical expenses, hospital expenses, physician expenses. surgical expenses, chiropractic expenses, diagnostic testing expenses; radiology expenses, therapy expenses, injection expenses, medical supply/equipment expenses, medication expenses, transportation expenses, mileage expenses, medical liens and requests for reimbursement by medical providers, health insurers, Medicaid, Medicaid health plans, Medicare or

> other entities (*except those providers who have filed their own lawsuits or intervened into the subject lawsuit as of the date of this Agreement*, including but not limited to Modern Luxe Transportation, Inc., Novi AA'S, LLC, and Wook Kim, M.D., P.C. d/b/a Farmbrook Interventional Pain and EMG), and all other medical expenses and allowable expenses incurred within the meaning of MCL 500.3105 and MCL 500.3107(1)(a) through March 15, 2019 . . . .

Defendant maintains that Paragraph 1 limits the arbitrable claims to those that plaintiff owns (and has not assigned) and that Paragraph 6 must be read in that context. While plausible, this interpretation does not explain why Paragraph 6 contains the italicized "exception" language. That is, if *all* assigned claims were intended to be excluded from arbitration (as defendant contends), why would "providers who have filed their own lawsuits or intervened" be specifically excluded?[1] The language seems superfluous. Indeed, it could be argued that the existence of the exception language suggests that other assigned claims (for which a provider had not filed suit or intervened) were to be included in the arbitration.

I conclude that we need not resolve these contract interpretation issues, however, because a party cannot, in any event, contract to do that which the law does not allow. See *Epps v 4 Quarters Restoration LLC*, 498 Mich 518, 538 n 15; 872 NW2d 412 (2015). Our Supreme Court has long described an assignment as follows:

> In 4 American Jurisprudence, 229, an assignment in law is defined as, "A transfer or setting over of property, or of some right or interest therein, from one person to another, and *unless in some way qualified*, it is properly the *transfer of one's whole interest* in an estate, or chattel, or other thing. It is the act by which one person transfers to another, or causes to vest in another, his right of property or interest therein."
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> The American Law Institute has defined an assignment of a right in its Restatement of the Law of Contracts, section 149(1), as, "A manifestation to another person by the owner of the right indicating his intention to transfer, without further action or manifestation of intention, the right to such other person or to a third person." [*Allardyce v Dart*, 291 Mich 642, 644-645; 289 NW 281 (1939) (emphasis added).]

The issue before us is whether, despite having executed assignments to certain providers, plaintiff retained the right to advance those claims in arbitration. But the assignments contained no qualification or reservation of rights by plaintiff. Consequently, under *Allardyce*, and regardless of the lack of clarity of the arbitration agreement, I agree with the majority that plaintiff

[1] A possible explanation, applying the "last antecedent" rule, is that the exception language relates not to assigned claims but only to "requests for reimbursement." See *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002). But plaintiff has not advanced this argument and, according to defendant, the providers identified within the exception language were indeed the recipients of assignments from plaintiff.

assigned her "whole interest" in those claims and that they therefore were not subject to the parties' arbitration agreement.

/s/ Mark T. Boonstra