STATE OF MICHIGAN

COURT OF APPEALS

NICHOLAS C. EVANS and CYNTHIA E. KERBY, Personal Representatives of the Estate of JERRY L. EVANS, Deceased,

Plaintiffs-Appellees,

v

THERESA R. JAHANIAN and FARNAM JAHANIAN,

Defendants,

and

JACK C. SCHMIDT and A.N.R. FREIGHT SYSTEMS, INC.,

Defendants-Appellants.

UNPUBLISHED
October 1, 2002

No. 228691
Washtenaw Circuit Court
LC No. 95-002383-NI

TAMMY BARRIOS, Personal Representative of the Estate of JANE ANDERSON, Deceased,

Plaintiff-Appellee,

v

THERESA JAHANIAN and FARNAM JAHANIAN,

Defendants,

and

A.N.R. FREIGHT SYSTEMS, INC.,

Defendant-Appellant.

No. 228694
Washtenaw Circuit Court
LC No. 95-001976-NI

JOANN FOOTE and TIFFANY HAWKINS,

Plaintiffs-Appellees,

v

No. 228696
Washtenaw Circuit Court
LC No. 95-002559-NI

THERESA R. JAHANIAN and FARNAM JAHANIAN,

Defendants,

and

JACK SCHMIDT and A.N.R. FREIGHT SYSTEMS, INC.,

Defendants-Appellants.

Before: Markey, P.J., and Cavanagh and R. P. Griffin*, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order affirming an arbitration award and from its award of interest in favor of plaintiffs. We affirm in part and reverse in part.

A series of vehicle collisions occurred on the morning of February 26, 1994, starting with a minor collision involving several cars, one of which was occupied by Jerry Evans, Joann Foote and Jane Anderson. A police officer soon responded and instructed all of the motorists to return to their vehicles for safety. As the officer began conducting an investigation, a car driven by Theresa Jahanian and a tractor trailer driven by Jack Schmidt of A.N.R crashed into the parked cars, killing Evans and Anderson. Foote was injured, as was Tiffany Hawkins, a passenger in Jahanian's car. These three consolidated lawsuits followed.

On April 20, 1998, on the record and before the trial court, the parties stated their intention to have the cases decided by binding arbitration. An arbitration hearing was conducted over the course of three days, and the panel of three arbitrators found Schmidt and A.N.R. Freight Systems, Inc., liable for the deaths and injuries described above.[1] The panel's award specified the amount each plaintiff should receive, and made no mention of interest.

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

[1] Defendants Jahanians, who settled the claims against them, are not parties to this appeal. This Court will use the term "defendants" to refer to Schmidt and A.N.R. Freight Systems, Inc.

Plaintiffs then sought to have the trial court confirm the arbitration award. However, defendants objected on several grounds including: the award should be vacated because the arbitration panel failed to include written findings of fact and conclusions of law with the award; the arbitration panel should have disqualified itself because it became aware of the Jahanians' settlement and insurance coverage; and that defendants as a matter of law could not be found negligent. The trial court disagreed with defendants and confirmed the arbitration award. Moreover, the trial court awarded plaintiffs preaward interest at the rate of five percent from the time the complaint was filed until the time the arbitration award was issued, together with postaward interest at the rate prescribed by MCL 600.6013. Defendants now appeal both the confirmation and the interest award by the trial court.

In our review of such challenges to an arbitration award, we find guidance in *DAIIE v Gavin*, 416 Mich 407, 411; 331 NW2d 418 (1982). There, our Supreme Court considered in depth the extent to which a decision by arbitrators is judicially reviewable. The *Gavin* Court recognized that the "manner, expense, promptness and finality" of arbitration were secondary to the primary concern of having the terms of the arbitration agreement fulfilled. *Id.* at 426-427. The Court stated:

> Reviewing courts can only act upon a written record. There is no requirement that a verbatim record be made of private arbitration proceedings, there are no formal requirements of procedure and practice beyond those assuring impartiality, and no findings of fact or conclusions of law are required. Thus, from the perspective of the record alone, a reviewing court's ability to review an award is restricted to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record. [*Id*. at 428-429.]

The Court also acknowledged that judicial review of arbitration is restricted because courts are generally reluctant to speculate what caused the arbitrator to rule as it did. *Id.* at 429. "It is only the kind of legal error that is evident without scrutiny of intermediate mental indicia which remains reviewable." *Id.*

In this case, defendants argue that the award is invalid because it lacks findings of fact and conclusions of law, citing *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 165; 595 NW2d 208 (1999). However, *Rembert* is inapplicable because it concerned pre-dispute agreements to arbitrate discrimination claims and because it was decided after the arbitration concluded in this case. Moreover, the parties agreed, at least implicitly, that written findings would not be required. At the outset of the hearing, this matter was discussed and the arbitrators concluded that the panel was required only to determine whether there was liability and, if so, the amount of damages. The hearing transcript makes clear that defendants' counsel was present, stood silent, and did not object. Defendants may not by their silence harbor error as an "appellate parachute." See, e.g., *Lasser v George*, ___ Mich App ___; ___ NW2d ___ (Docket No. 226920, issued 7/2/02), slip op at 3. We therefore do not find error on this basis.

Furthermore, the parties' agreement in this case does not preclude all judicial review. The arbitration hearing was transcribed. That, along with the other documentation submitted to the trial court, provides a written record that can be reviewed. *Gavin, supra*, at 429.

The parties agree that under Michigan Court Rules this Court shall vacate an arbitration award if:

> (a) the award was procured by corruption, fraud, or other undue means;
>
> (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;
>
> (c) the arbitrator exceeded his or her powers; or
>
> (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights. [MCR 3.602(J)(1).]

An arbitrator has exceeded his powers when there is a legal error "so material or substantial as to have governed the award, and but for which the award would have been substantially otherwise." *Gavin, supra* at 443. Review of factual findings is precluded unless found in manifest disregard of the evidence. See *Donegan v Michigan Mutual Ins*, 151 Mich App 540, 549; 391 NW2d 403 (1986); *Jaffa v Shacket*, 114 Mich App 626, 635; 319 NW2d 604 (1982).

With these standards in mind we turn now to consider the other legal errors asserted by defendants, based on the record we are provided. Defendants contend that the evidence was insufficient as a matter of law to establish liability. On review, we cannot consider weight or compare quantity of evidence; nonetheless, the record contains testimony of experts who attributed the accident at least in part to defendant Schmidt's negligence. *Id*. Therefore, we cannot say as a matter of law that the arbitrators' conclusions were erroneous.

Defendants also make broad, unsupported, and unspecific claims that their rights were prejudiced by the manner the hearing was conducted, by misconduct at the arbitration, and by the inclusion of evidence that should have been considered inadmissible. These matters are not briefed and are therefore abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Furthermore, the parties agreed that the strict rules of evidence would not apply to the arbitration. We find no error.

Two other legal issues defendants raise do not provide grounds for reversal. The absence of one of the defendants did not substantially prejudice defendants' rights because she was fully deposed by defense counsel, and the parties stipulated that the panel could review her deposition. Likewise, the panel's refusal to disqualify itself due to its awareness of the insurance and settlement status of the Jahanians did not result in the kind of material error described by *Gavin, supra* at 443. The transcript reveals that the arbitrators carefully considered the circumstances and concluded that the information would "not effect our opinions or our results in any way." Defendants do not counter this decision with anything more than speculation.

Defendants also challenge the trial court's award of five percent preaward interest on the arbitration awards from the time the complaints were filed. We agree that this interest was awarded erroneously.

> The decision whether to award preaward, prejudgment interest as an element of damages is reserved as a matter of the arbitrator's discretion. Because preaward damage claims including interest are deemed, in the absence of a contrary agreement, to have been submitted to arbitration, and the arbitrators here did not award interest, we will not step in and mandate interest for the preaward period. However, consistent with *Old Orchard* [*by the Bay Assoc v Hamilton Mut Ins Co*, 434 Mich 244, 454 NW2d 73 (1990)], postaward, prejudgment interest and postjudgment interest under [MCL 600.6013] are statutorily required. [*Holloway Construction Co v Oakland Co Bd of Rd Comm'rs*, 450 Mich 608, 618; 543 NW2d 923 (1996).]

Here, as in *Holloway,* the arbitration award was silent as to the issue of interest. Therefore, we can only assume that the panel either declined to award interest or factored the interest into its award. Regardless, the trial court's award of preaward interest amounts to error; interest could only accrue from the day of the award, November 16, 1998, forward. We reverse this portion of the judgment against defendants.

Finally, defendants contend that the trial court erred by applying the wrong statute in fixing the rate of postaward interest. We disagree. The Court correctly applied MCR 600.6013.

Affirmed in part, reversed in part and remanded for modification of the interest award consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Robert P. Griffin