

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANOR HEALTH CARE CENTER,  
INC.,  
Appellant,  
vs.  
MICHAEL MONSOUR; ADAM  
MONSOUR; EDWARD MONSOUR, JR.;  
DANNY MONSOUR; AND SANDRA  
AMSTUTZ, AS SPECIAL  
ADMINISTRATOR OF THE ESTATE  
OF EDWARD MONSOUR,  
Respondents.

No. 52796

**FILED**

JUN 23 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order confirming an arbitration award and entering a final judgment on the award in an elder abuse and wrongful death action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

After Edward Monsour died while in the care of appellant Manor Health Care Center (MHCC), his estate sued MHCC for negligence, and statutory violations, while his heirs sued for wrongful death. The parties entered binding arbitration, and the arbitrator found for Monsour's estate on all its causes of action, but found for MHCC on the wrongful death claim. The arbitrator awarded compensatory damages to Monsour's estate; damages for personal injury and the pain and suffering of Monsour and his heirs; damages for the loss of companionship, society, comfort, consortium, and grief and sorrow for Monsour's heirs; and attorney fees, in the total amount of \$754,431.32. Monsour's estate moved to confirm the arbitration award, and MHCC moved to modify or correct the award. The arbitrator declined to modify the award. MHCC then moved the district

court to modify or correct the award or, in the alternative, to vacate the award. The district court denied MHCC's motion and confirmed the award. This appeal followed.

The parties are familiar with the facts and procedural history of the case and we do not recount them further here except as is necessary to our disposition.

## DISCUSSION

MHCC appeals, arguing that the district court erred by: (1) not modifying or correcting the arbitration award and (2) not vacating the award. We disagree.

### I. The district court did not err by refusing to modify or correct the award

#### A. Standard of review

Nevada recognizes statutory provisions for the review of arbitration awards. Health Plan of Nevada v. Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 176 (2004). The party attacking the validity of the award must prove by clear and convincing evidence the grounds relied upon in challenging the award. Id. MHCC requested correction or modification of the award pursuant to NRS 38.242. That statute provides for modification or correction of the award in the following three circumstances: (1) if the arbitrator made an "evident mathematical miscalculation or a mistake in the description of a person, thing or property in the award"; (2) if the "arbitrator has made an award on a claim not submitted to the arbitrator"; or (3) if the award "is imperfect in a matter of form" that does not affect the merits of the decision. NRS 38.242(1).

B. Evident mathematical miscalculation

MHCC argues that the arbitrator made evident mathematical miscalculations in the award by doubling the amounts of certain damages. We disagree.

Other courts considering evident mathematical miscalculation under the Uniform Arbitration Act define it as clear mathematical error. North Blvd. Plaza v. North Blvd. Associates, 526 S.E.2d 203, 205 (N.C. Ct. App. 2000). A mathematical miscalculation of figures is one that occurs under an agreed to standard or principle, but is not a disagreement about the standard itself. Dadak v. Commerce Ins. Co., 758 N.E.2d 1083, 1085 (Mass. App. Ct. 2001). MHCC's disagreement is about whether Monsour's estate can legally receive doubled damages, therefore challenging the merits of the award rather than a clear mathematical error. Doubled damages for pain and suffering, and loss of companionship, consortium, and support do not constitute an evident mathematical miscalculation within the meaning of NRS 38.242(1)(a).

II. The district court did not err by refusing to vacate the award

A. Standard of review

This court also recognizes common-law grounds for reviewing an arbitration award. Health Plan of Nevada, 120 Nev. at 695, 100 P.3d at 176. A court may vacate an arbitration award under the common law if the arbitrator manifestly disregarded the law. Wichinsky v. Mosa, 109 Nev. 84, 89-90, 847 P.2d 727, 731 (1993). "Manifest disregard of the law goes beyond whether the law was correctly interpreted," and the challenger must show that the arbitrator consciously disregarded the law. Health Plan of Nevada, 120 Nev. at 699, 100 P.3d at 179.

B. Analysis of MHCC's arguments

MHCC asserts that the arbitrator manifestly disregarded the law when he awarded damages for "personal injury, pain and suffering of Edward Monsour and the heirs to his estate," and for "loss of companionship, society, comfort, consortium, grief and sorrow" for Monsour's heirs. MHCC bases its argument on Nevada's wrongful death statute, NRS 41.085(2), because it provides the only cause of action for the heirs of a decedent, and the arbitrator found for MHCC on that claim. Further, MHCC claims that because it requested that the arbitrator modify or correct the award under NRS 38.242, this demonstrates the arbitrator's awareness of the law, proving his manifest disregard of it.

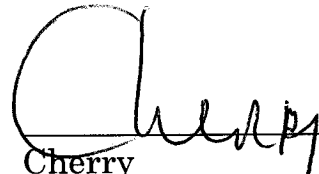
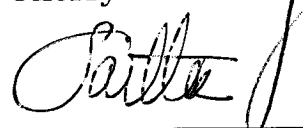

This argument lacks merit. Even if an arbitrator made errors regarding facts or application of the law, they do not amount to manifest disregard of the law. Health Plan of Nevada, 120 Nev. at 699, 100 P.3d at 179. Manifest disregard of the law "encompasses a conscious disregard of applicable law." Id. The arbitrator must have known the law, recognized that the law required a certain result, and then disregarded it. Clark Cty. Educ. Ass'n v. Clark Cty. Sch. Dist., 122 Nev. 337, 342, 131 P.3d 5, 8 (2006). MHCC must provide evidence that not only did it communicate the correct law to the arbitrator, but the arbitrator "intentionally and knowingly chose to ignore that law despite the fact that it was correct." ABCO Builders v. Progressive Plumbing, 647 S.E.2d 574, 575 (Ga. 2007). There must be concrete evidence of an intent to disregard known law in the findings of the arbitrator or in the transcript of the proceedings. Id. at 576.

Here, where no transcript exists, the evidence is "best reflected by the arbitrator's award." Wichinsky, 109 Nev. at 87, 847 P.2d at 729. The arbitrator's award provides no evidence of an arbitrator who

knew the law, recognized that it required a certain result, and then disregarded it. See Montes v. Shearson Lehman Bros., Inc., 128 F.3d 1456, 1461-62 (11th Cir. 1997) (determining a manifest disregard of law because the record reflected arbitrators who knew the law and disregarded it).

MHCC's argument that the arbitrator knew the law and manifestly disregarded it because MHCC moved for the arbitrator to modify or correct the award also lacks merit. As discussed above, MHCC's claims to modify or correct the award do not fit within the statutory restrictions of NRS 38.242. The statute does not require the arbitrator to modify or correct the award for the reasons cited by MHCC. Consequently, we conclude that the district court did not err by refusing to vacate the arbitration award and confirming the award to Monsour's estate.

Accordingly, we ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
Cherry \_\_\_\_\_ J.  
  
Saitta \_\_\_\_\_ J.  
  
Gibbons \_\_\_\_\_ J.

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<sup>1</sup>We have considered all the other arguments raised by MHCC and conclude they are without merit.

cc: Hon. Timothy C. Williams, District Judge  
Ara H. Shirinian, Settlement Judge  
Beach Whitman, LLP  
Perry & Spann/Las Vegas  
Leavitt Law Firm  
Levine & Associates  
Eighth District Court Clerk