

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CAROL O'NEILL,
Appellant,
vs.
VICTOR E. GRIGORIEV, M.D.,
Respondent.

No. 70493

FILED

APR 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court's order denying judicial relief from an arbitrator's orders striking an expert witness and granting summary judgment.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

"[T]he scope of judicial review of an arbitration award is limited and is nothing like the scope of an appellate court's review of a trial court's decision." *Health Plan of Nevada, Inc. v. Rainbow Med., LLC.*, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004). We do not concern ourselves with whether the arbitrator made the "correct" ruling; rather, we will deny relief from an arbitrator's ruling unless it was "arbitrary, capricious, or unsupported by the agreement" or the arbitrator "manifestly disregarded the law." *Bohlmann v. Printz*, 120 Nev. 543, 546-47, 96 P.3d 1155, 1157-58 (2004) *overruled on other grounds by Bass-Davis v. Davis*, 122 Nev. 442, 452 n.32, 134 P.3d 103, 109 n.32 (2006). Reviewing whether the arbitrator's award was arbitrary, capricious, or unsupported by the agreement is to ensure only "that the arbitrator does not disregard the facts or terms of the arbitration agreement"; reviewing whether the

¹We do not recount the facts except as necessary to our disposition.

arbitrator manifestly disregarded the law is to ensure only that the arbitrator recognizes the applicable law and does not simply disregard it—not that the arbitrator correctly interpreted and applied the law. *Clark County Educ. Ass'n v. Clark County School Dist.*, 122 Nev. 337, 341–42, 131 P.3d 5, 8–9 (2006) (“neither standard permits a reviewing court to consider the arbitrator’s interpretation of the law” (citing *Bohlmann*, 120 Nev. at 547, 96 P.3d at 1157–58)); *see also* NRS 38.218; 38.241.

O’Neill filed this medical malpractice suit against Dr. Grigoriev alleging negligent medical treatment after surgery. She alleged that, after surgery, Dr. Grigoriev failed to timely recognize and treat the signs and symptoms of her damaged colon. However, because O’Neill failed to provide an expert report in this case, the arbitrator struck Dr. Siggighi’s testimony and subsequently entered summary judgment in favor of respondents.

Under NRCP 16.1(a)(2), for an expert to testify at trial, the party calling the expert must disclose the expert’s identity and provide a written report by the expert. The parties agree that the expert disclosure deadline in this case was November 2, 2015 and O’Neill failed to provide any expert report by that date. O’Neill argues that the arbitrator’s decision to strike Dr. Siggighi’s testimony was error because the arbitrator’s assistant gave confusing answers as to whether this deadline was still in effect, but this communication occurred three days after O’Neill had already missed the deadline. Therefore, the arbitrator’s decision was not arbitrary, capricious, or unsupported by the agreement, and there is no evidence that he manifestly disregard the law.

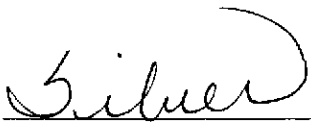
We also agree with the district court’s decision to deny relief from the arbitrator’s grant of summary judgment. Under NRS 41A.100(1),

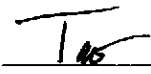
expert medical testimony is required to establish liability for medical malpractice unless an exception applies. With Dr. Siggighi stricken, O'Neill had identified no experts to testify on her behalf. Thus, Dr. Grigoriev was entitled to summary judgment unless an exception to NRS 41A.100(1)'s requirement of expert testimony applied.

O'Neill claimed malpractice only for Dr. Grigoriev's post-surgical treatment; however, she never pleaded a claim based on any of Dr. Grigoriev's acts during surgery and never provided substantial evidence on the record that any negligence occurred during the surgery. Thus, we cannot say that the arbitrator "manifestly disregarded the law" in concluding none of NRS 41A.100(1)'s exceptions applied and we conclude that the arbitrator's award was not arbitrary, capricious, or unsupported by the arbitration agreement on this record.²

Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²We also note that appellant's briefing fails to establish any grounds for vacating the award under NRS 38.218 or 38.241.

cc: Department 10, Eighth Judicial District Court
Hon. Elizabeth Gonzalez, Chief Judge, Eighth Judicial District
Court
Stephen E. Haberfeld, Settlement Judge
Thomas & Springberg, P.C.
Mandelbaum, Ellerton & Associates
Eighth District Court Clerk