**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-757**

North Star Taxi,
Appellant,

vs.

Progressive American Insurance Company,
Respondent.

**Filed January 30, 2012**
**Affirmed; motion for sanctions denied and motion to strike granted**
**Bjorkman, Judge**

Dakota County District Court
File No. 19HA-CV-10-4553

Peter J. Nickitas, Peter J. Nickitas Law Office, LLC, Minneapolis, Minnesota (for appellant)

Nicholas L. Klehr, Lori L. Jensen-Lea, LaBore, Guiliani, Cosgriff & Viltoft, Ltd., Hopkins, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Huspeni, Judge.*

**U N P U B L I S H E D  O P I N I O N**

**BJORKMAN**, Judge

Appellant challenges the district court's confirmation of an arbitration award, arguing that the arbitrator misapplied the law and that judicial review of the award is

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

warranted. Appellant also seeks attorney fees as a sanction against respondent, and respondent has moved to strike portions of appellant's brief. We affirm, deny appellant's motion for fees, and grant respondent's motion to strike.

## FACTS

Appellant North Star Taxi, Inc. is in the business of leasing, renting, and bailing taxicabs for use by independent contractors. Respondent Progressive American Insurance Company provides automobile insurance. North Star and Progressive are parties to a voluntary arbitration agreement obligating them to resolve their property-damage and business-interruption-loss claims through intercompany arbitration before Arbitration Forums, Inc. (AFI). The agreement requires application of Minnesota law and provides that arbitration awards are "final and binding without the right of rehearing or appeal."

In February 2008, a motor-vehicle accident occurred between one of Progressive's insureds and one of North Star's bailee-independent contractors. Pursuant to the arbitration agreement, North Star presented its property-damage and business-interruption-loss claims to an AFI arbitrator. The arbitrator determined that each of the two drivers was 50% responsible for the accident. Accordingly, the arbitrator reduced North Star's undisputed damages by 50% based on the bailee-independent contractor's negligence.

North Star moved the district court to vacate the award, arguing that the arbitrator's reduction of North Star's damages was not authorized under Minnesota's bailment law. The district court concluded that North Star waived the right to seek

vacation of the arbitration award by entering into the arbitration agreement and declined to address the merits of the vacation motion. The district court confirmed the arbitration award, and this appeal follows.

## D E C I S I O N

### I. North Star contractually waived its right to judicial review of the arbitration award.

Parties to an arbitration proceeding generally are entitled to limited judicial review under the Minnesota Uniform Arbitration Act (UAA), Minn. Stat. §§ 572.08-.30 (2010). *Hunter, Keith Indus., Inc. v. Piper Capital Mgmt. Inc.*, 575 N.W.2d 850, 854 (Minn. App. 1998). An arbitrator is "the final judge of both law and fact," so the standard of review is "extremely narrow." *Id.* (quotation omitted). A district court may vacate an award only if it was issued in excess of the arbitrator's authority, Minn. Stat. § 572.19, or modify or correct an award if it does not comport with the arbitrator's apparent intent, Minn. Stat. § 572.20.

The issue here is whether North Star waived its right to limited judicial review of the arbitration award by entering into the following provision in the arbitration agreement:

> The decision of the arbitrator(s) . . . is final and binding without the right of rehearing or appeal except when allowed under the Procedure Section of the Property and Special Forum rules. However, this does not preclude [AFI] from correcting a clerical or jurisdictional error of an arbitrator(s) or [AFI] staff.

North Star argues that this contract language did not waive its review rights and, if it did, such waiver is "ineffective as a matter of law." We address each argument in turn.

"Waiver is the voluntary and intentional relinquishment of a known right." *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 798 (Minn. 2004). Whether the parties intended a waiver of judicial review is determined from the plain language of the arbitration agreement. *See Arrowhead Pub. Serv. Union v. City of Duluth*, 336 N.W.2d 68, 70 (Minn. 1983) (stating that the parties' intent is to be determined from the language of the arbitration agreement); *Children's Hosp., Inc. v. Minn. Nurses Ass'n*, 265 N.W.2d 649, 652 (Minn. 1978) (stating that the scope of an arbitrator's powers is determined from the parties' arbitration agreement); *Univ. of Minn. v. Woolley*, 659 N.W.2d 300, 308 (Minn. App. 2003) (stating that the right to arbitrate is governed by contract), *review denied* (Minn. June 17, 2003). We review de novo the interpretation of an arbitration agreement. *Murray v. Puls*, 690 N.W.2d 337, 343 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005).

North Star argues that it did not voluntarily and intentionally relinquish its right to obtain judicial review because the arbitration agreement does not expressly reference the UAA. We disagree. Although the arbitration agreement does not expressly reference judicial review under the UAA, the language is broad with respect to the finality of the arbitrator's decision and the unavailability of any appeal. We have previously construed judicial review under the UAA as an appeal to the district court. *See QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. App. 2010) (discussing review under UAA as "appeal[] to the district court"); *Hunter*, 575 N.W.2d at 854 (discussing procedure under Minn. Stat. § 572.19 as a "judicial appeal from an arbitration decision"). Based on the plain language of the parties' voluntary

arbitration agreement, we conclude that North Star waived its right to judicial review of the arbitration award.

Having determined that the arbitration agreement effects a waiver of the right to limited judicial review under the UAA, we next consider whether the waiver provision is valid. The right to arbitrate "is governed by contract and the parties may fashion whatever agreement they wish to limit the scope of the proceedings." *Woolley*, 659 N.W.2d at 308 (quotation omitted); *see also Peggy Rose Revocable Trust v. Eppich*, 640 N.W.2d 601, 608 (Minn. 2002) (stating that "parties are generally free to structure their arbitration agreements as they see fit" (quotation omitted)). Unless public policy otherwise indicates, parties to an arbitration agreement may waive statutory rights in defining the scope of the arbitration. *See A.J. Lights, LLC v. Synergy Design Grp., Inc.*, 690 N.W.2d 567, 569 (Minn. App. 2005) (stating that a party may waive a statutory right unless the waiver is prohibited by public policy).

North Star cites *Great W. Cas. Co. v. State Farm Mut. Auto. Ins. Co.*, 590 N.W.2d 675 (Minn. App. 1999), for the proposition that the arbitration agreement violates public policy.[1] But *Great West* is inapplicable here. *Great West* involved intercompany arbitration of a no-fault subrogation claim brought pursuant to the Minnesota No-Fault Automobile Insurance Act.[2] State Farm challenged the award on the ground that the arbitrator applied the wrong comparative-negligence analysis in determining the

[1] North Star faults Progressive for not recognizing *Great West* as binding authority and seeks attorney fees on that basis, as we discuss below.

[2] The no-fault act permits subrogation claims when accidents involve commercial vehicles. Minn. Stat. § 65B.53 (2010).

respective liability of the two drivers. We held that the district court was authorized to review the arbitrator's award, notwithstanding the parties' written agreement to waive judicial review, because of the "special rule" that "interpretations of the no-fault act are always subject to judicial review." *Great West,* 590 N.W.2d at 677 (citing *Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988)) (stating the final interpretation of all provisions of the Minnesota No-Fault Automobile Insurance Act must be left to the judiciary to ensure consistent interpretation of that law).

In contrast, this case does not implicate the no-fault act. The parties' dispute does not involve arbitration pursuant to the no-fault act or interpretation of any provisions of that act. Rather, it involves voluntary intercompany arbitration of a property-damage dispute. *Great West* does not prohibit waiver of judicial review under these circumstances.

North Star also argues that waiver of statutory rights under the UAA is contrary to the holding in *Grudem Bros. Co. v. Great W. Piping Corp.*, 297 Minn. 313, 213 N.W.2d 920 (1973). We are not persuaded. First, *Grudem Bros.* is inapposite—it does not address waiver of judicial review. Second, *Grudem Bros.* does not broadly prohibit waiver of the right to an attorney under the UAA, as North Star asserts, but reiterates the statutory limitation on *when* a party to an arbitration proceeding may waive the right to counsel. *See Grudem Bros.*, 297 Minn. at 316, 213 N.W.2d at 922; *see also* Minn. Stat. § 572.13 (2010) (stating that a party to a UAA proceeding is entitled to attorney representation and a waiver of that right is "ineffective" prior to the proceeding). Third, even if a party to an arbitration proceeding were completely barred from waiving the

right to an attorney, North Star does not explain why waiver of judicial review would be similarly prohibited.[3]

We conclude that the parties' arbitration agreement plainly establishes a valid waiver of judicial review of the arbitration award. Because the agreement to waive review does not violate public policy, the district court did not err by dismissing North Star's motion to vacate the award.

## II. North Star is not entitled to attorney fees.

North Star seeks attorney fees under Minn. Stat. § 549.211 (2010) as a sanction for Progressive's alleged violation of its duty of candor to the court. If a party violates its obligations to the court by presenting improper, frivolous, or insupportable arguments or claims, the court may impose sanctions on that party or counsel in an amount "sufficient to deter repetition of the conduct or comparable conduct by others similarly situated." Minn. Stat. § 549.211, subds. 2, 3, 5. "An award of attorney fees on appeal rests within the discretion of this court." *Case v. Case*, 516 N.W.2d 570, 574 (Minn. App. 1994).

North Star argues that Progressive violated its duty of candor by failing to acknowledge the dispositive effect of *Great West.* But as we concluded above, *Great West* does not stand for the proposition North Star asserts. Accordingly, North Star has failed to establish a basis for imposing attorney fees as a sanction against Progressive.

[3] North Star also argues that the legislature's 2010 revision of the UAA reflects the intent to preclude waiver of judicial review. *See* 2010 Minn. Laws ch. 264, art. 1, § 4, at 500-01 (prohibiting waiver of the judicial-review provisions). But the legislature expressly limited application of the revised UAA, 2010 Minn. Laws ch. 264, art. 1, § 3, at 500, and North Star concedes that the revised UAA does not apply here. Nor can we infer from plain language of the revised UAA whether the revised judicial-review provisions were intended to change the law or clarify the legislature's original intent.

## III. North Star's arguments regarding federal law are waived and therefore stricken.

Interspersed with its arguments about the UAA, North Star argues that the arbitration agreement is governed by the Federal Arbitration Act (FAA), which North Star asserts prohibits parties from waiving the right to judicial review. Progressive has moved to strike these portions of North Star's brief, arguing that North Star waived any argument regarding the FAA by not presenting it to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate review is limited to issues argued, considered, and decided in the district court). We agree. North Star sought judicial review of the arbitration award pursuant to the UAA but never invoked the FAA as a basis for judicial review. We will not disturb the district court's decision based on an argument that North Star did not present to it, particularly when the applicability of the FAA depends on the disputed issue of whether the subject of the parties' arbitration was a transaction affecting interstate commerce. *See Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 351 (Minn. 2003). We therefore grant Progressive's motion to strike the portions of North Star's brief challenging the district court's decision based on the FAA.

**Affirmed; motion for sanctions denied and motion to strike granted.**