

negligence of underinsured drivers. The plaintiff sought benefits pursuant to this policy, claiming that the driver of the other vehicle involved in the accident, Lloyd Searcy, was underinsured and that Searcy's negligence proximately caused the accident. The policy specifically provided that in order to obtain payment pursuant to the underinsured provision, the insured and the insurer must come to an agreement with regard to whether the insured was "legally entitled to collect damages from the owner or driver of the uninsured motor vehicle or underinsured motor vehicle" and "[i]f so, in what amount?" If the parties could not come to an agreement on these two questions, the policy provided that arbitration would follow, and that "[s]tate court rules governing procedure and admission of evidence" would be used in arbitration. The procedural history of the subsequent arbitration and litigation is somewhat long and convoluted. Because this is an unpublished order, and because the parties are very familiar with the facts of this case, we shall recite only those facts necessary to our disposition of the present appeal.

¶ 5 Upon remand of this case from this court following an earlier appeal, an arbitration hearing was held on April 22, 2009. Following the hearing, the arbitrators ruled in favor of the defendant, stating that the plaintiff "failed to meet its burden of proof on the issue of liability in this case," and that the arbitrators found "that Oldham's testimony, considered in the light most favorable to [the] plaintiff, failed to establish that Michael Reagan, deceased, was less than 50% the cause of the accident at issue in the case." The plaintiff filed a petition to vacate the award, contending the award was void because the arbitrators had employed the incorrect standard for contributory negligence in Illinois. The trial court denied the motion to vacate, but remanded the case to the arbitrators for "clarification of the decision/award." After the arbitrators filed a new award in which they restated their earlier award and added only, "and therefore the Estate of Michael Reagan is precluded from recovery against" the defendant, the trial court again remanded the award for clarification, pointing out that the

award did not clearly indicate "if the arbitrators concluded that [the] plaintiff's decedent was equally at fault, more than 50% at fault[,] or if the evidence failed to establish the issue of fault." The third and final award from the arbitrators again stated that the plaintiff "failed to meet its burden of proof on the issue of liability in this case," stated that "Michael Reagan, deceased, was more than 50% of the total approximate [*sic*] cause of the accident," and stated that the plaintiff was barred from recovering from the defendant. The plaintiff again sought to vacate the award. The trial court denied the plaintiff's request for relief, and this timely appeal followed.

¶ 6

ANALYSIS

¶ 7 On appeal, the plaintiff first contends the arbitrators "exceeded their powers" because, according to the plaintiff, the arbitrators disregarded Illinois law by foisting upon the plaintiff the "burden to prove freedom from contributory negligence." The plaintiff draws this conclusion from the wording of all three of the arbitrators' awards that the arbitrators found, by majority, that the plaintiff "failed to meet its burden of proof on the issue of liability in this case." The plaintiff correctly notes this court's holding in *Mileur v. Briggerman*, 110 Ill. App. 3d 721, 728 (1982), that subsequent to the Illinois Supreme Court's adoption of comparative negligence, "it has been the law of this [s]tate that a plaintiff in a negligence action need not prove that he exercised due care for his own safety." However, the *Mileur* decision and the other legal authority cited by the plaintiff refer only to the burdens of the parties *had the underlying action gone to trial*; no case cited by the plaintiff addresses the burdens of the parties in an action to invoke insurance coverage, which is what the arbitrators faced in the case at bar.

¶ 8 It is well-settled in Illinois that in an action to determine if insurance coverage is present, "the burden is on the insured to prove that its claim falls within the coverage of an insurance policy." *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009). Accordingly,

the plaintiff in the case at bar, as the insured under its policy with the defendant, had the burden to show that it was entitled to collect payment under the policy. To do that, the plaintiff had to prove, pursuant to the plain language of the policy, that the plaintiff was "legally entitled to collect damages from the owner or driver of the uninsured motor vehicle or underinsured motor vehicle." The arbitrators' statement, in their third and final award, that the plaintiff "failed to meet its burden of proof on the issue of liability in this case" and that "Michael Reagan, deceased, was more than 50% of the total approximate [*sic*] cause of the accident," is simply their finding that the plaintiff did not meet the burden of proof to show coverage under the policy, because the plaintiff had failed to show that the plaintiff was "legally entitled to collect damages" from Searcy. There was no improper shifting of the burden of proof to the plaintiff. To the contrary, pursuant to *Addison* and the voluminous case law upon which it is based, the burden was always properly on the plaintiff to show that coverage existed. Thus, although it is true, as the plaintiff contends, that the Illinois Supreme Court has held that if it appears on the face of an arbitration award that the arbitrators were "so mistaken as to the law that, if apprised of the mistake, the award would be different," a reviewing court may vacate an arbitration award on the grounds of gross mistake of fact or law (*Board of Education of the City of Chicago v. Chicago Teachers Union, Local No. 1*, 86 Ill. 2d 469, 477 (1981)), the plaintiff is mistaken that such a mistake of law is present on the face of the arbitration award in the case at bar.

¶ 9 Although the plaintiff insinuates that fraud or partiality on the part of the arbitrators might account for their decision against the plaintiff, the defendant correctly notes that an arbitration award may only be vacated on the grounds of partiality if the complaining party has shown "a direct, definite[,] and demonstrable interest, on the part of the arbitrator, in the outcome of the arbitration." *Edward Electric Co. v. Automation, Inc.*, 229 Ill. App. 3d 89, 101 (1992). "The proof of partiality may not be remote, uncertain[,] or speculative." *Id.* The

trial court rejected the plaintiff's speculative, unsupported, and unsubstantiated insinuations of impropriety on the part of the arbitration panel, and we reject them as well.

¶ 10 The plaintiff next contends "the trial court had no authority to remand either the first or second award to the same arbitrators for 'clarification,' " and instead should have vacated the awards, because, according to the plaintiff, there was "no ambiguity in the award[s] and none was specified by the court." There is no merit to this contention. As the defendant aptly notes, the plain language of the Illinois Uniform Arbitration Act (the Act), which governs the arbitration proceedings in the case at bar, provides that if a petition to vacate an arbitration award is pending before a trial court pursuant to section 12 of the Act, "on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated [elsewhere in the Act] or for the purpose of clarifying the award." 710 ILCS 5/9 (West 2010). The appellate court has previously interpreted section 9 of the Act as specifically giving "the court the power to remand an award for clarification." *Federal Signal Corp. v. SLC Technologies, Inc.*, 318 Ill. App. 3d 1101, 1113 (2001).

¶ 11 The plaintiff's final contention on appeal is that "the arbitrators did not make a mistake in fact or law, but simply chose to ignore the contract." Although not as coherent as it might be, the plaintiff's argument on this point seems to simply rehash the plaintiff's earlier contention that the arbitrators "exceeded their powers" by improperly shifting the burden of proof on contributory negligence to the plaintiff. We have already rejected this argument, and decline to consider it further.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons, we affirm the order of the circuit court of St. Clair County.

¶ 14 Affirmed.

¶ 15 JUSTICE CHAPMAN, dissenting:

¶ 16 I cannot agree with the majority's interpretation of the arbitration award. I would agree with the majority, if the award had merely begun and ended with the first sentence—"By majority the Arbitrators find that plaintiff failed to meet its burden of proof on the issue of liability in this case." Even such a bare-boned award should be upheld as there would be nothing on its face to indicate that the arbitrators had exceeded their authority, as we are to presume that arbitrators do not exceed their authority, and we are to construe awards, whenever possible, to uphold their validity. *Klatz v. Western States Insurance Co.*, 298 Ill. App. 3d 815, 819-20, 701 N.E.2d 1135, 1138-39 (1998).

¶ 17 However, the award did not end there, but went on to state that, "The Arbitrators find that Michael Reagan, deceased, was more than 50% of the total approximate [*sic*] cause of the accident at issue in the case and therefore the Estate of Michael Reagan is precluded from recovery against State Farm Insurance Company." This is a gross mistake of the law because any issue as to plaintiff's contributory negligence arises *only if* the defendant has been determined to be a proximate cause of the plaintiff's injury. *Mileur v. Briggerman*, 110 Ill. App. 3d 721, 728, 442 N.E.2d 1356, 1361 (1982); Illinois Pattern Jury Instructions, Civil, No. B21.02 (2011) (hereinafter, IPI Civil (2011) No. B21.02). Furthermore, the defendant—not the plaintiff—bears the burden of proof on this issue. *Id.* Because the arbitrators had already stated "that plaintiff failed to meet its burden of proof on the issue of liability," *i.e.*, that defendant was not a proximate cause of the injury, it becomes apparent on the face of the award that the arbitrators were under a gross misapprehension of the law when they stated in the award that they had considered the percentage of plaintiff's fault and had also apparently shifted the burden on that issue to plaintiff. IPI Civil (2011) No. B21.02. Gross errors of judgment in law are grounds for vacating an award if they are apparent upon the face of the award. *Board of Education of the City of Chicago v. Chicago Teachers*

Union, Local No. 1, 86 Ill. 2d 469, 477, 427 N.E.2d 1199, 1202 (1981); *Klatz*, 298 Ill. App. 3d at 819-20, 701 N.E.2d at 1138-39.

¶ 18 I find nothing in the majority's opinion that convinces me otherwise. The mere fact that the arbitrators could have reasonably found from the evidence that the defendant was not a proximate cause of the plaintiff's injuries, does not dispose of the fact that the arbitrators on the face of the award incorrectly set out the law upon which they decided the case.

¶ 19 I would vacate the award and remand for a new arbitration.