**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

May 27, 1998

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 97-2719**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT III**

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**MARK A. FRANZ,**

**PLAINTIFF-APPELLANT,**

**v.**

**LITTLE BLACK MUTUAL INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Taylor County: GARY L. CARLSON, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Mark Franz appeals a summary judgment that dismissed his insurance claim lawsuit against his property insurer, Little Black Mutual Insurance Company. Vandals damaged Franz's rooming house, and he submitted a property damage claim to Little Black. The damage required the building's demolition, and each party had the vandalism damage appraised. The

Little Black policy required this traditional two-appraiser process for property damage claims, with an umpire to resolve disputes between the appraisers. Two appraisers reached different appraisals, and in compliance with the policy, the parties submitted their conflicting appraisals to an umpire for resolution. In a letter-ruling, the umpire chose the Little Black appraiser's valuation over Franz's. The trial court rejected Franz's attempt to overturn the umpire's decision. Franz claimed relief because of: (1) Little Black's appraiser's failure to co-sign the umpire's decision as required by the Little Black policy, and (2) the umpire's failure to adopt a specific dollar award for the property damage. The trial court also refused to allow Franz to amend his complaint to attack the substance of the umpire's analysis.

On appeal, Franz raises three arguments: (1) the umpire's letter was not a proper written decision within the meaning of the policy, which required the umpire to set a specific dollar award for damages and the umpire-endorsed appraiser to co-sign the umpire's decision; (2) the trial court should have allowed him to amend his pleading; and (3) the umpire incorrectly chose the appraisal of Little Black's appraiser over Franz's. As part of the third argument, Franz treats the umpire like an arbitrator; he claims that trial courts may upset the umpire's decisions not only for fraud, but also for mistake or perversity. He sees the umpire's decision to undertake the kind of mistaken, perverse analysis that courts have the power to remedy. The trial court correctly granted summary judgment if there was no dispute of material fact and Little Black deserved judgment as a matter of law. *See* ***Powalka v. State Life Mut. Assur. Co.***, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). We agree with Franz that umpires' decisions are reversible in certain circumstances. Nonetheless, we reject Franz's arguments and affirm the summary judgment.

Umpires are third parties chosen to resolve disagreements between two arbitrators. *See* BLACK'S LAW DICTIONARY 1365 (5th ed. 1979). Insurance appraisers are not full-fledged arbitrators. *See* ***Toledo S.S. Co. v. Zenith Transp. Co.***, 184 F. 391, 402-07 (6th Cir. 1911). They are essentially one-issue decision makers who deal solely with valuation. *See* ***id.*** Nonetheless, courts use the same basic scope of review for appraisers and umpires as they do for arbitrators. *See* ***Dechant v. Globe & Rutgers Fire Ins. Co.***, 194 Wis. 579, 582, 217 N.W. 322, 322-23 (1928); ***Chandos v. American Fire Ins. Co.***, 84 Wis. 184, 191, 54 N.W. 390, 391-92 (1893). Courts may overturn their decisions for fraud, mistake, or perversity. *See* ***Joint Sch. Dist. v. Jefferson Educ. Asso.***, 78 Wis.2d 94, 116-18, 253 N.W.2d 536, 547 (1977). Moreover, courts give appraisers and umpires a large degree of freedom in their judgments on value; many "'honest and sensible judgments'" rest on "'an intuition and experience which outruns analysis and sums up many unnamed and tangled impressions—impressions which may lie beneath consciousness without losing their worth.'" *See* ***Eau Claire v. Eau Claire Water Co.***, 137 Wis. 517, 529-30, 119 N.W. 555, 560 (1909) (*quoting* ***Chicago B. &. Q. R. Co. v. Babcock***, 204 U.S. 585, 598 (1907) (Holmes, J.)).

We first conclude that the umpire's letter-ruling sufficiently met the policy's twin requirements that the umpire set a specific sum and that the umpire-endorsed appraiser co-sign the umpire's ruling. The umpire's ruling reviewed and incorporated Little Black's appraiser's valuation in substance, even if the ruling never set a specific sum. The umpire's ruling implicitly adopted and incorporated that appraisal's damage sum when his ruling endorsed that appraiser's valuation methods and found that appraisal to be "an appropriately supported conclusion of value."

The umpire also seems to have inadvertently overlooked the co-signing formality. Errors on immaterial points provide no basis to overturn the umpire's decision. *See* ***Donaldson v. Buhlman***, 134 Wis. 117, 119-20, 113 N.W. 638, 639 (1908). We cannot perceive how the co-signing defect, if a real defect, was material to the umpire's ruling or Franz's rights. It was at most an error in form, not substance, and the substance of the ruling was the important point. We also cannot see how Franz suffered any harm from the co-signing defect; Little Black's appraiser must have agreed with the umpire's decision to endorse his appraisal. We must ignore technical defects by umpires on unessential matters. *See* ***Chandos***, 84 Wis. at 198-99, 54 N.W. at 894; s*ee also* ***Toledo***, 184 F. at 407-08 (one appraiser's failure to join immaterial).

Next, the trial court had no duty to permit Franz to amend his complaint to attack the merits of the umpire's decision. Because the matter was discretionary, *see* ***Carl v. Spickler Enters., Ltd.***, 165 Wis.2d 611, 622-23, 478 N.W.2d 48, 52-53 (Ct. App. 1991), the trial court needed no more than a reasonable basis for its decision. *See* ***Littmann v. Littmann***, 57 Wis.2d 238, 250, 203 N.W.2d 901, 907 (1973). Franz could have amended his complaint earlier. Franz had been in the process through two appraisals and the umpire's decision. Throughout this process, the scope of the vandalism was the sole issue, and the focus of the umpire's letter-ruling was the same—the relative merits of the two damage appraisals. Moreover, the appraisers and umpire were one-issue decision makers from the start; this further put Franz on notice. If Franz wanted the trial court to review the umpire's decision for fraud, mistake, and perversity, he had sufficient notice of the main issue to put a timely claim in his complaint. We reject Franz's claim that he could defer that issue until the trial court first ruled on the co-signing issue. Contrary to Franz's argument, a ruling on the co-signing

issue was not a condition precedent to attacking the letter-ruling's merits. Both claims were part of the same cause of action, and Franz had to plead both at once.

Last, even if the trial court should have allowed the pleading's amendment, its error would have been harmless. Franz has established no fraud, mistake, or perversity by the umpire. He needed to show this kind of affirmative misconduct, *see* ***Joint Sch. Dist.***, 78 Wis.2d at 116-18, 253 N.W.2d at 547, or a substantial failure to appreciate the matter, *see* ***Dechant***, 194 Wis. at 582, 217 N.W. at 323, in order to overturn the umpire's letter-ruling. We have reviewed Franz's attack on the umpire's ruling. Franz is essentially arguing that the umpire misjudged the accuracy and persuasiveness of the two appraisals. He cites the size of the discrepancy between the two appraisals: $107,600 versus $19,400. We see no affirmative misconduct like fraud, mistake, or perversity. We also see no substantial failure to appreciate the matter. The umpire's ruling reveals an awareness of various appraisal methods and the issues at stake, and Franz has identified nothing that would amount to anything other than an honest judgment on a matter of fact or law. Honest errors on fact or law give no cause to overturn the umpire's judgment. *See* ***Buhlman***, 134 Wis. at 119, 113 N.W. at 639. The umpire simply found the appraisal of Little Black's appraiser more persuasive and gave grounds for his conclusion. In short, the trial court correctly granted Little Black summary judgment.

*By the Court*.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.