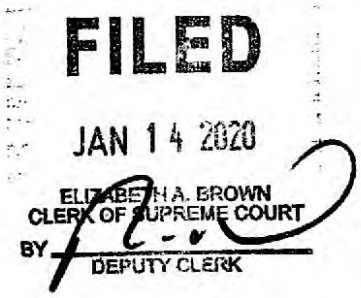
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAMUEL BLYVEIS,
Appellant,
vs.
LYON COUNTY,
Respondent.

No. 77260-COA



ORDER OF AFFIRMANCE

Samuel Blyveis appeals a district court order denying his motion to vacate an arbitration award. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Blyveis was employed as a deputy sheriff with Lyon County from September 2, 2014, until his termination—apparently without cause—on September 18, 2015. Lyon County and the Lyon County Sheriff's Association were parties to a collective bargaining agreement (CBA) that governed Blyveis' employment. He filed a grievance and alleged that Lyon County could not terminate him without cause because he had passed the 12-month probation period under the CBA. Lyon County filed a motion to stay arbitration on the ground that Blyveis could not grieve his claim because the CBA had an 18-month probation period. The district court granted Lyon County's motion, which was reversed by the supreme court. *See Blyveis v. Lyon Cty.*, Docket No. 71119, at *1-2 (Order of Reversal and Remand, July 11, 2017) (explaining that the question of whether Blyveis was a probationary employee required an interpretation of the CBA, and thus, was arbitrable). On remand, the parties solely arbitrated the issue of whether Blyveis was a probationary employee.

During arbitration, Blyveis averred that the CBA did not apply because of NRS 288.155.[1] Thus, Blyveis argued that with no CBA in effect, the Lyon County policy and procedures manual governed his employment, and he alleged that this document had a 12-month probation period. The arbitrator rejected Blyveis' arguments, and concluded that he was a probationary employee under the CBA. Specifically, the arbitrator found that Article 10(2) of the CBA—which stated that "[a]ll new employees, whether hired at the entry level or other level, shall be classified as probationary employees for a period of eighteen (18) months"—imposed an 18-month probation period. Thus, the arbitrator denied Blyveis' grievance. In the district court, Blyveis moved to vacate the arbitrator's decision on the ground that he manifestly disregarded the law (i.e., by not applying NRS 288.155 to conclude that the CBA was void), which was denied.[2]

Blyveis appeals, arguing that the district court erred in denying his motion to vacate the arbitration award because the arbitrator manifestly disregarded the law by failing to apply NRS 288.155 to conclude that the CBA was void. We disagree.

"This court reviews a district court's decision to vacate or confirm an arbitration award de novo." *Washoe Cty. Sch. Dist. v. White*, 133

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[1]NRS 288.155(1)(b) (2015) stated that a collective bargaining agreement "[e]*xpires for the purposes of this section at the end of the term stated in the agreement*, notwithstanding any provision of the agreement that it remain in effect, in whole or in part, *after the end of that term until a successor agreement becomes effective.*" (Emphasis added.) NRS 288.155(1)(b) became effective on June 1, 2015, and was repealed on June 6, 2019. *Compare* 2015 Nev. Stat., ch. 315, § 1.3, at 1596 *with* 2019 Nev. Stat., ch. 432, § 3, at 40.

[2]We do not recount the facts except as necessary to our disposition.

Nev. 301, 303, 396 P.3d 834, 838 (2017). "The party seeking to attack the validity of an arbitration award has the burden of proving, by clear and convincing evidence, the statutory or common-law ground relied upon for challenging the award." *Id.* (quoting *Health Plan of Nev., Inc. v. Rainbow Med., LLC*, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004)). "But the scope of the district court's review of an arbitration award (and, consequently, our own de novo review of the district court's decision) is extremely limited, and is nothing like the scope of an appellate court's review of a trial court's decision." *Knickmeyer v. State*, 133 Nev. 675, 676, 408 P.3d 161, 164 (Ct. App. 2017) (internal quotations omitted). "[C]ourts give considerable deference to the arbitrator's decision. Judicial review is limited to inquiring only whether a petitioner has proven, clearly and convincingly, that . . . the arbitrator's actions were arbitrary, capricious, or unsupported by the agreement [or] the arbitrator manifestly disregarded the law . . . ." *Id.* at 676-77, 408 P.3d at 164.

Here, Blyveis has not shown by clear and convincing evidence that the arbitrator's actions were arbitrary, capricious, or unsupported by the agreement, nor that the arbitrator manifestly disregarded the law. The supreme court's prior order implicitly concluded that the CBA was in effect by concluding that Article 12(2)(a) of the CBA mandated that arbitration was required to determine whether Blyveis was a probationary employee. Thus, the supreme court's prior order contradicts Blyveis' assertion that NRS 288.155 voided the CBA. *See Blyveis*, Docket No. 71119, at *1-2. Therefore, the arbitrator did not manifestly disregard the law in concluding that the CBA was still in effect. *See, e.g., Recontrust Co., N.A. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) ("[A] court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of

the case) by that court or a higher one in earlier phases." (internal quotations omitted)).

In addition, Lyon County points out—and we agree—that Blyveis cannot grieve his termination under the CBA if it is voided by NRS 288.155. Further, at the district court hearing Blyveis' attorney stated that "[t]he [s]upreme [c]ourt says there's a collective bargaining agreement in place." Thus, it cannot be said that the arbitrator manifestly disregarded the law in concluding that the CBA applied to this dispute, and that NRS 288.155 did not render it void. The supreme court, however, did not expressly decide whether Blyveis was a probationary employee under the CBA. We must still analyze whether the arbitrator manifestly disregarded the law in concluding that Blyveis was a probationary employee under the CBA.

We conclude that the arbitrator did not manifestly disregard the law in concluding that Blyveis was a probationary employee for two independent reasons. First, the record here is missing two documents that are necessary to assess the merits of Blyveis' arguments. Specifically, there is no record of the successor CBA from 2014-2017, which was apparently retroactive, and therefore, may have governed this dispute. More importantly, there is no copy of the policy and procedures manual that Blyveis contends contained a 12-month probation period. The "[a]ppellant[is] responsible for making an adequate appellate record, and when appellant fails to include necessary documentation in the record, *we necessarily presume that the missing portion supports the district court's decision*." *McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 496 (2016) (second alteration in original) (emphasis added) (internal quotations omitted)).

Without these documents in the record, it is not possible to conclude that the arbitrator manifestly disregarded the law, and to the contrary, we presume that the arbitrator and district court made the correct decision. Further, the burden is on the appellant to show—by clear and convincing evidence—that the arbitrator manifestly disregarded the law. For this reason, we cannot conclude that the district court erred in denying Blyveis' motion to vacate the arbitrator's decision.

Second, both the arbitrator and the district court found that the CBA provided an 18-month probation period, and the only version of the CBA in the record expressly provides—in Article 10(2)—that "[a]ll new employees, whether hired at the entry level or other level, *shall be classified as probationary employees for a period of eighteen (18) months . . .*" (Emphasis added.) Under the plain terms of the CBA, Blyveis was required to serve an 18-month probation period. Thus, the arbitrator did not manifestly disregard the law, nor act arbitrary or capriciously, in concluding that Blyveis was a probationary employee who could be terminated without cause. Therefore, the district court did not err in denying Blyveis' motion to vacate the arbitration award.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[3]Insofar as Blyveis argues that the arbitrator exceeded his powers, we conclude that this argument does not present a basis for relief because of our conclusion that the arbitrator did not manifestly disregard the law.

cc: Hon. Leon Aberasturi, District Judge
Laurie A. Yott, Settlement Judge
Michael E. Langton
Allison MacKenzie, Ltd.
Third District Court Clerk