

IN THE UTAH COURT OF APPEALS

<p>SHANNON SUMMERS, Appellant, <i>v.</i> AMERICAN FAMILY MUTUAL INSURANCE, Appellee.</p>	<p>ORDER OF AFFIRMANCE Case No. 20210746-CA</p>
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Before Judges Orme, Tenney, and Luthy.

Shannon Summers asserts on appeal that the trial court “erred in refusing to include in a judgment prejudgment interest on special damages awarded in an arbitration award.” We are not persuaded by Summers’s arguments and affirm.¹

Summers was injured in a car accident in 2012. She sued the tortfeasor and settled that claim for policy limits. At the time of the accident, American Family Mutual Insurance was Summers’s auto insurance carrier. Summers made an underinsured motorist claim under her own auto insurance policy that was submitted to binding arbitration in 2020 under Utah’s underinsured motorist statute. *See* Utah Code Ann. § 31A-22-305.3 (LexisNexis Supp. 2022). Summers prevailed at arbitration and was

1. American Family contends that Summers “has failed to show that the issue presented has been preserved.” Summers asserts that the issue on appeal was preserved on pages “149–154” of the record, but the record before us comprises only 109 pages, with no alternative page numbers corresponding to that range included elsewhere or further identified by Summers. “We generally will not consider an issue unless it has been preserved for appeal,” *Patterson v. Patterson*, 2011 UT 68, ¶ 12, 266 P.3d 828, but “[o]ur preservation requirement is self-imposed and is therefore one of prudence rather than jurisdiction,” *id.* ¶ 13. Thus, “if the merits of a claim can easily be resolved in favor of the party asserting that the claim was not preserved, we readily may opt to do so without addressing preservation.” *State v. Kitches*, 2021 UT App 24, ¶ 28, 484 P.3d 415 (quotation simplified), *cert. denied*, 496 P.3d 718 (Utah 2021). Accordingly, we consider the issue on its merits.

awarded both general and special damages. Neither party challenged the arbitrator's findings of fact.

Subsequently, Summers petitioned the district court to confirm the arbitrator's award, assess prejudgment interest associated with the special damages included in the award, and enter an enforceable judgment against American Family. During a status conference regarding Summers's petition, the parties briefly argued about Summers's request for prejudgment interest, after which the court took the matter under advisement. The court later entered its written decision.

In its decision, the district court explained a district court's role in confirming an arbitral award. The court noted that "[t]he standard for reviewing an arbitration award is highly deferential to the arbitrator" and that judicial confirmation "should be limited to the statutory grounds and procedures for review." *See Buzas Baseball, Inc. v. Salt Lake Trappers, Inc.*, 925 P.2d 941, 946–47 (Utah 1996). The court further explained that "the trial court's review of an arbitration award is extremely narrow" and that "[t]he trial court may not substitute its judgment for that of the arbitrator, nor may it modify or vacate an award because it disagrees with the arbitrator's assessment." *See id.* at 947.

Against this background, the court found that "the issue of interest was not addressed during arbitration" and that the arbitral award "makes no mention of any interest owed to" Summers. The court also found that Summers did not file a timely motion with the arbitrator to modify or correct the award and noted that Summers "provided this court with no authority justifying this court's modification and/or correction of the arbitrator's award to include prejudgment interest." Based on these findings, the court concluded that Summers did not satisfy the demands of sections 78B-5-823 and -824 of the Utah Code and that she was not entitled to prejudgment interest on the special damages portion of the arbitral award. Consistent with this conclusion, the court confirmed the arbitral award and entered a judgment against American Family for the amount of the award. Summers appealed.

Summers challenges the court's conclusion that she is not entitled to prejudgment interest and contends that there are two distinct reasons why she is "legally entitled to prejudgment interest on special damages awarded at arbitration." She argues first that "prejudgment interest is a mandatory exclusive duty of the district court" and second, that "prejudgment interest is a permissible modification to the award." We are not persuaded by either argument.

"Our law has long favored arbitration as a speedy and inexpensive method of adjudicating disputes and easing court congestion." *Taylor v. Taylor*, 2022 UT 35, ¶ 44, 517

P.3d 380 (quotation simplified). “We have held that judicial review of arbitration awards should not be pervasive in scope or susceptible to repetitive adjudications, but rather strictly limited to the statutory grounds and procedures for review.” *Id.* (quotation simplified). “As a general rule, . . . an arbitration award will not be disturbed on account of irregularities or informalities in the proceeding or because the court does not agree with the award as long as the proceeding was fair and honest and the substantial rights of the parties were respected.” *Id.* (quotation simplified) “The standard of review for a trial court reviewing an arbitration award is an extremely narrow one: The court should give considerable leeway to the arbitrator, setting aside his or her decision only in certain narrow circumstances.” *Buzas Baseball*, 925 P.2d at 947 (quotation simplified). “It is well settled, both in Utah and in the federal courts, that the trial court may not substitute its judgment for that of the arbitrator, nor may it modify or vacate an award because it disagrees with the arbitrator’s assessment.” *Id.* (quotation simplified). “Further, courts do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts” because “if the courts were free to intervene on these grounds, the speedy resolution of grievances by private mechanisms would be greatly undermined.” *Id.* at 948 (quotation simplified). “In reviewing the order of a trial court confirming, vacating, or modifying an arbitration award, we grant no deference to the district court’s conclusions of law but review them for correctness.” *Id.* (quotation simplified).

In the case at hand, the court first concluded that section 78B-5-824 of the Utah Code did not entitle Summers to prejudgment interest because the arbitral award “makes no mention of any interest owed to” Summers and “[n]either a jury nor a court determined the amount of special damages in this case.” The court’s latter observation was made in contemplation of section 824, which provides a framework regarding a plaintiff’s claim for prejudgment interest in personal injury cases. Specifically, section 824 recognizes that a plaintiff “*may* claim interest on special damages actually incurred from the date of the occurrence of the act giving rise to the cause of action.” Utah Code Ann. § 78B-5-824(1) (LexisNexis 2009) (emphasis added).² And if interest is claimed and special damages are found by the fact finder, the court has the “duty” to award interest in the amount set by statute. *See id.* § 78B-5-824(2).

As found by the court, Summers made no mention of prejudgment interest in her arbitration brief or during arbitration, and the arbitral award “makes no mention of any interest owed to” Summers. We conclude that the court did not err in deciding that

2. We cite the language of the code in effect at the time the cause of action arose. *See State v. Clark*, 2011 UT 23, ¶ 13, 251 P.3d 829 (stating that “we apply the law as it exists at the time of the event regulated by the law in question”).

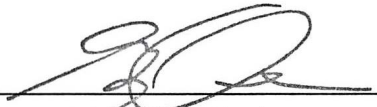
Summers may not withhold her claim for prejudgment interest until so late in the proceedings, i.e., after the arbitrator fixed the award and, without first asking the arbitrator to modify or correct the award, endeavoring to raise the interest issue as an adjunct to seeking confirmation of the arbitrator's award.³

Summers also contends that the assessment of "prejudgment interest is a permissible modification to the award," similar to a court's ability to award attorney fees and court costs in a contested judicial proceeding concerning an arbitration award. *See id.* § 78B-11-126(3) (stating that "the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award"). But Summers has not demonstrated that prejudgment interest fits within the term "reasonable attorney fees and other reasonable expenses of litigation." *See id.* And the plain meaning of the phrase does not encompass interest owing on amounts adjudged to be due.

Affirmed.

Dated this 26th day of June, 2023.

FOR THE COURT:



Gregory K. Orme, Judge

3. The court also concluded that a plain reading of section 824 barred Summers from recovering prejudgment interest. The court noted that "[i]t is the duty of the court, in entering judgment for plaintiff in that action, to add to the amount of special damages actually incurred that are assessed by the verdict of the jury, or found by the court, prejudgment interest on that amount." Utah Code Ann. § 78B-5-824(2) (LexisNexis 2009). The court concluded that because the amount of special damages was determined by an arbitrator and because "[n]either a jury nor a court determined the amount of special damages in this case," Summers could not have recovered interest even if she had raised the claim before the arbitrator in a timely fashion. In the court's view, an arbitrator is neither a court nor a jury so Summers could not recover prejudgment interest on her special damages in that forum. We need not reach this alternative ground for affirming the district court's ruling, and so we express no opinion on this view.

CERTIFICATE OF SERVICE

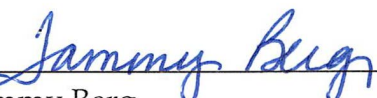
I hereby certify that on June 26, 2023, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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By  _____
Tammy Berg
Legal Secretary

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