STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1012

Connie Grill,
Appellant,

vs.

North Star Mutual Insurance Company,
Respondent.

Filed January 27, 2014
Affirmed
Schellhas, Judge

Koochiching County District Court
File No. 36-CV-12-127

Steven A. Nelson, International Falls, Minnesota (for appellant)

Joseph M. Boyle, Jr., International Falls, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Schellhas, Judge; and Klaphake, Judge.*

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

SCHELLHAS, Judge

Appellant challenges the summary judgment granted to respondent. We affirm.

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

FACTS

Appellant Connie Grill's home was insured by respondent North Star Mutual Insurance Company, effective August 31, 2010, to August 31, 2011, with coverage up to $155,500 and a $500 deductible. In February 2011, Grill submitted an insurance claim for damage resulting from an ice dam. A North Star insurance adjustor assessed the damage, and North Star issued Grill a check in March in the amount of $6,713.60. Grill began repairs and decided that they should include demolition so that she could see the full extent of the damage. She provided North Star with receipts for supplies and labor and, in April, a claims adjustor "reinspected the loss and revised the estimate," noting that Grill's demolition of her home "was excessive." North Star issued Grill a second check in April in the amount of $5,418.19.

In May, the International Falls building inspector inspected Grill's home at her request. The inspector issued a report, noting that the home failed the inspection and providing the following "[c]omments":

1. Repair water damaged walls, floors, & ceilings due to ice damming of roof.
2. Re-install adequate insulation in walls & ceilings.
3. Ventilate attic space correctly.
4. Re-wire entire home.
5. Re-plumb entire home.
6. Replace or repair foundation.

The inspector also stated in the report that the "old home has been completely gutted, showing the need for the above repairs and an analysis of the entire structure *before* any permits are issued."

Grill sought an estimate from Up North Builders for the necessary repairs. In September, Up North Builders opined that "the cost and risk to perform work on the existing building [was] not safe, practical, or economically feasible" and estimated a cost of $162,000 to "replace the house with a new structure," which exceeded the insurance-policy limit of $155,500.

In October, based on his inspections, the building inspector notified Grill that "numerous violations of the City of International Falls Code of Ordinances and the Minnesota State Building Code" existed and asked Grill to "consider remedying the concern by utilizing the City of International Falls demolition program for the removal of hazardous or dilapidated residential buildings," if she determined that she would not make the necessary repairs to correct the noted building-code violations. Grill then informed North Star that her home was a "total loss" because it violated building code and she was "unable to find a licensed contractor that would consider meeting the requirements." North Star denied Grill's total-loss claim. Grill then submitted a demolition application to the City of International Falls, and the city demolished her home in December.

Grill sued North Star for denial of her total-loss claim, and the district court granted summary judgment to North Star and denied Grill's claim for living expenses. This appeal follows.

D E C I S I O N

Grill argues that she suffered a total loss within the meaning of her North Star insurance policy and that the district court erred by granting summary judgment to North

Star because, when read together with Minn. Stat. §§ 65A.08, 65A.10 (2012) and caselaw, her insurance policy covers her total loss.[1] We disagree.

On appeal from summary judgment, an appellate court's "task is to determine whether genuine issues of material fact exist, and whether the district court correctly applied the law." *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013) (quotation omitted). A district court properly grants summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Appellate courts conduct a de novo review of the district court's summary-judgment decision and "view the evidence in the light most favorable to the party against whom summary judgment was granted." *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013).

In granting summary judgment to North Star, the district court concluded as follows:

> There is no genuine issue of material fact as to whether or not prior to the insure[d] demolishing her home a determination of "Total Loss" was made by a city official, a representative of the insurer, a real estate appraiser, a court of law or any person qualified to make such a legal determination. It was not.

[1] We cite the most recent version of the statutes because they have not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

The court also concluded that "[c]overage of the claim is not a reasonable interpretation of the [insurance] policy."

"The interpretation of insurance contracts is a question of law." *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012). "Subject to the statutory law of the state, a policy of insurance is within the application of general principles of the law of contracts." *Id.* (quotation omitted). "[Appellate courts] review the language of a contract to determine the intent of the parties." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012). "When the language of a contract is clear and unambiguous, we enforce the agreement of the parties as expressed in the contract. But if the language is ambiguous—that is, susceptible to more than one reasonable interpretation—parol evidence may be considered to determine the intent of the parties." *Id.* (citation omitted).

"Whether a contract is ambiguous is a question of law that we review de novo." *Id.* (quotation omitted). "[W]here the language used in an insurance policy, which is chosen by the insurance company, is ambiguous or susceptible of two meanings, it must be given that meaning which is favorable to the insured." *Garrick v. Northland Ins. Co.*, 469 N.W.2d 709, 713 (Minn. 1991) (quotation omitted). But "such interpretation should not go beyond the reasonable expectations of the insured." *Id.*

Grill's insurance policy insured her home against "risks of direct physical loss, unless the loss is excluded." A loss is "direct and proximate" if the loss is "[t]he active, efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent

source." *Marshall Produce Co. v. St. Paul Fire & Marine Ins. Co.*, 256 Minn. 404, 417, 98 N.W.2d 280, 290 (1959) (emphasis omitted) (quotations omitted). In two separate checks, North Star paid Grill for her partial loss resulting from damage to her home caused by the roof ice dam. Grill argues that her partial loss became a total loss because the ensuing "chain of events" directly led to the demolition of her home. But she concedes in her brief that her claimed total loss did not *directly* result from the ice dam when she states that "[t]he evidence is clear and undisputed that the conditions giving rise to building code enforcement were not caused by the ice dam claim of February 17, 2011." The plain language of Grill's insurance policy does not cover her total-loss claim.

Grill argues that, despite the plain language of her insurance policy, North Star must pay her the policy limit for her total loss due to demolition of her home because the coverage of her insurance policy is expanded by Minn. Stat. §§ 65A.08, subd. 2(a), 65A.10, subd. 1, and caselaw. We disagree.

Grill's argument presents a question of statutory interpretation. *See Marine Credit Union v. Detlefson-Delano*, 830 N.W.2d 859, 864 (Minn. 2013) ("The parties' dispute presents a question of statutory interpretation, which [appellate courts] review de novo."). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2012). "We determine legislative intent primarily from the language of the statute itself." *Marine Credit Union*, 830 N.W.2d at 864 (quotation omitted). "Our first inquiry is whether the statute is ambiguous." *Id.* "When a statute's language is unambiguous, our role is to give effect to the statute's plain meaning." *Id.* at 864–65. If the language as applied is "clear and free

from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16.

The relevant statutory language in Minn. Stat. § 65A.08, subd. 2(a), is not ambiguous and provides that, generally, "the insurer shall pay the whole amount mentioned in the policy or renewal upon which it receives a premium, in case of total loss, and in case of partial loss, the full amount thereof." Grill argues that Minn. Stat. § 65A.08, subd. 2(a), requires paying the policy limit for her total loss. Grill is incorrect; her loss was the partial loss from the roof ice dam. Grill recovered from North Star the full amount of her partial loss from the ice-dam damage. Grill is not entitled to be paid the policy limit for a total loss.

Grill argues that North Star is required to pay the policy limit because section 65A.10, subdivision 1, requires insurance companies to pay any increase in repair costs due to complying with building codes. The relevant portion of the statute provides as follows:

> Subject to any applicable policy limits, where an insurer offers replacement cost insurance: (i) the insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities . . . . In the case of a partial loss, unless more extensive coverage is otherwise specified in the policy, this coverage applies only to the damaged portion of the property.

Minn. Stat. § 65A.10, subd. 1. The statute is not ambiguous and does not require payment of Grill's total-loss claim.

Grill argues that two cases require North Star to pay increased repair costs necessary to remedy noncompliance with building codes: *John Larkin v. Glens Falls Ins. Co.*, 80 Minn. 527, 83 N.W. 409 (1900), and *Zalk & Josephs Realty Co. v. Stuyvesant Ins. Co.*, 191 Minn. 60, 253 N.W. 8 (1934). In *John Larkin*, fire damaged an insured's building and the building inspector refused to issue a building permit necessary to repair the building, citing the fire damage as empowering him to condemn the building. 80 Minn. at 529–30, 532, 83 N.W. at 409−11. The court deemed the building a total loss covered by the policy because it could not be repaired. 80 Minn. at 532, 83 N.W. at 411. Similarly, in *Zalk*, fire damaged an insured's building and the building inspector refused to issue a building permit necessary to repair the building, citing the fire damage as empowering him to condemn the building. 191 Minn. at 62–63, 253 N.W. at 10. The court deemed the building a total loss covered by the policy because the building could not be repaired. 191 Minn. at 70, 253 N.W. at 14. Grill's reliance on *John Larkin* and *Zalk* is misplaced because the record contains no evidence that the building inspector refused to issue a building permit for the repairs.

Neither statutes nor caselaw expand North Star insurance coverage to include Grill's total-loss claim. No genuine issue of material fact exists about whether Grill's ice-dam damage resulted in a partial loss and a separate "building code enforcement [that was] not caused by the ice dam." Under the plain language of Minn. Stat. § 65A.10, subd. 1, North Star is required to pay any relevant ordinance costs necessary to repair the portion of the property damaged by the ice-dam loss. Because the ice-dam damage did not cause the building-code violations, the statute does not dictate that North Star was

liable for payment to Grill of the cost of remedying the building-code violations in her home. We therefore conclude that the district court properly granted summary judgment to North Star.

Affirmed.