This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1587

Aaron Wesser,
Appellant,

vs.

State Farm Fire and Casualty Company,
Respondent.

Filed June 6, 2022
Reversed and remanded
Bratvold, Judge

Hennepin County District Court
File No. 27-CV-21-4824

Anthony A. Remick, Timothy D. Johnson, Smith Jadin Johnson, PLLC, Bloomington, Minnesota (for appellant)

Scott G. Williams, HAWS-KM, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant-insured sued respondent-insurer seeking a declaratory judgment that appellant is entitled to preaward interest under Minn. Stat. § 549.09 (2020) based on an appraisal award of replacement cost value for fire damage to appellant's home. Appellant argues the district court erred by granting respondent's motion for summary judgment and

denying preaward interest based on language in appellant's homeowner's policy. Because the relevant policy language is ambiguous and must be construed in favor of the insured, we conclude the policy does not exclude preaward interest under Minn. Stat. § 549.09 for an appraisal award of replacement cost value. Thus, we reverse and remand for proceedings consistent with this opinion.

FACTS

On February 5, 2020, a fire damaged appellant Aaron Wesser's home in Minneapolis. Wesser was insured against fire loss or damage under a homeowner's policy issued by respondent State Farm Fire and Casualty Company (State Farm). On the day of the fire, Wesser submitted a written notice of claim to State Farm for damage to his home.

The homeowner's policy covers "all loss or damage" by fire to Wesser's home. The "loss settlement" provisions promise to pay "the cost to repair and replace with similar construction" and also state that, until "actual repair or replacement" is completed, the insurer will pay "only the actual cash value" of the "damaged part of the property" up to the policy limit. When the repair or replacement is "actually completed [the insurer] will pay the covered additional amount [the insured] actually and necessarily spend[s]." Actual cash value (ACV) is defined by separate endorsement as "the value of the damaged part of the property at the time of the loss, calculated as the estimated cost to repair or replace such property, less a deduction to account for pre-loss depreciation."

Wesser's policy also provides that if State Farm and Wesser "fail to agree on the amount of the loss," either party can demand that "the amount of the loss be set by appraisal." The appraisal panel will issue a written report that will "state separately the

actual cash value, replacement cost, and if applicable, the market value of each item in dispute." The written appraisal report is "binding" on Wesser and State Farm.

On July 10, 2020, State Farm estimated the replacement cost value and paid Wesser $241,451.45 for the ACV of the fire damage to his home. Based on an estimate from a contractor, Wesser disputed both the replacement cost value and the ACV and demanded an appraisal. On February 4, 2021, the appraisal panel issued a written award and determined the ACV to be $228,191.74 and the replacement cost value to be $302,113.50.

Citing Minn. Stat. § 549.09, Wesser's attorneys made a written demand for $30,211.35 in preaward interest on the appraisal award for replacement cost value. Wesser's calculation of preaward interest accrued from the date of written notice of Wesser's fire claim and continued until the appraisal award was issued. State Farm refused to pay preaward interest, stating that preaward interest "is not applicable based on the terms and conditions of the Wesser policy."

On March 29, 2021, Wesser sued State Farm, seeking a declaratory judgment that he was entitled to preaward interest. Both parties moved for summary judgment. After a hearing, the district court denied Wesser's motion for summary judgment and granted State Farm's motion for summary judgment. The district court determined the homeowner's policy language "unambiguously precludes *any* interest until the [loss] becomes payable." Because the policy provides the loss is payable "*after* proof of loss and filing of the appraisal award," the district court reasoned that "any interest that would attach before the award ('preaward interest') is explicitly excluded by the [policy] language."

Wesser appeals.

DECISION

Appellate courts review a district court's summary-judgment decision de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Appellate courts determine "whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.*

In this appeal, we are asked to interpret an insurance policy in relation to the preaward-interest statute. The interpretation of an insurance policy or a statute is a question of law that we review de novo. *Depositors Ins. Co. v. Dollansky*, 919 N.W.2d 684, 687 (Minn. 2018). The goal of statutory interpretation "is to ascertain and effectuate the intention of the legislature," and each statute "shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2020); *accord Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716 (Minn. 2014).

Wesser's declaratory judgment action rests on Minn. Stat. § 549.09, subd. 1(b), which provides, "Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed . . . from the . . . time of a written notice of claim." The purpose of preaward interest is "to compensate the plaintiff for the loss of use of [their] money, and, by implication, to deprive the defendant of any gain resulting from the use of money rightfully belonging to the plaintiff." *Burniece v. Ill. Farmers Ins. Co.*, 398 N.W.2d 542, 544 (Minn. 1987).

The Minnesota Supreme Court held that Minn. Stat. § 549.09 "unambiguously provides for preaward interest on all awards of pecuniary damages that are not specifically excluded by the statute." *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 141 (Minn.

2017). In *Poehler*, the supreme court considered whether a homeowner's policy precluded an insured from recovering preaward interest on an appraisal award for fire damage. *Id*. The supreme court determined that the policy there at issue "governs only when a covered loss is payable" and does not address when preaward interest "begins to accrue." *Id.* at 142. The supreme court held that "absent contractual language explicitly precluding preaward interest, an insured may recover preaward interest on an appraisal award for a fire insurance loss." *Id*.

State Farm contends Wesser's policy explicitly precludes Wesser's claim for preaward interest. An amendatory endorsement (loss-payable endorsement) to Wesser's policy provides that a "[l]oss will be payable five business days after [State Farm receives the insured's] proof of loss and: (a) reach[es] an agreement with [the insured]; (b) there is an entry of a final judgment; or (c) there is a filing of an appraisal award with [State Farm]." The same endorsement also provides that "[n]o interest accrues on the loss until after the loss becomes payable" (no-interest language). Reading the no-interest language together with the rest of this endorsement, the provision prohibits interest "on the loss" until five days after State Farm receives proof of loss and the appraisal award is filed with State Farm.

Wesser argues the loss-payable endorsement is ambiguous. State Farm disagrees, contending that, after *Poehler*, State Farm "amended its policy to expressly address when interest begins to accrue on a loss." State Farm argues the relevant language excludes interest on the loss until after the loss becomes payable. Because Wesser's loss became payable after the appraisal award and "State Farm paid Wesser what was owed within five

business days of the filing of the appraisal award," State Farm reasons that "no preaward interest has accrued" on Wesser's claim.

We begin by interpreting the relevant language in the loss-payable endorsement. Appellate courts interpret an insurance policy "to ascertain and give effect to the intentions of the parties as reflected in the terms of the policy." *King's Cove Marina, LLC v. Lambert Com. Constr. LLC*, 958 N.W.2d 310, 316 (Minn. 2021) (quotation omitted). An insurance policy is to be construed "so as to give effect to all provisions." *Id.* (quotation omitted). "We give unambiguous policy language its plain and ordinary meaning." *Id*. But we "construe ambiguous policy language 'in favor of coverage' and read exclusions 'narrowly against the insurer.'" *Id*. (quoting *Wanzek Constr., Inc. v. Emps. Ins. of Wausau*, 679 N.W.2d 322, 325 (Minn. 2004)). Policy language is ambiguous if it is "susceptible to two or more reasonable interpretations." *Midwest Fam. Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013).

Here, the loss-payable endorsement provides "no interest accrues" on "the loss" before it becomes payable. Wesser's homeowner's policy, however, does not define "the loss." Indeed, State Farm urges us to focus on the no-interest language as merely defining when interest accrues. But the central question before this court is how to interpret "the loss" to which the no-interest language applies. The parties do not dispute *when* interest accrues under the no-interest language; the parties dispute *whether* the no-interest language *applies* to exclude Wesser's claim for preaward interest on the replacement cost value. Unfortunately, the parties do not offer any legal analysis on how to interpret "the loss" in the loss-payable endorsement. Caselaw instructs, however, that "[i]f undefined terms in an

insurance policy are reasonably susceptible to more than one interpretation, the terms must be interpreted liberally in favor of finding coverage." *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 579 (Minn. 2009); *see also Wanzek Constr., Inc.*, 679 N.W.2d at 329.

We turn to the policy as a whole to interpret "the loss" as used in the loss-payable endorsement. *See King's Cove Marina, LLC*, 958 N.W.2d at 316. Throughout Wesser's policy, "the loss" is used in various ways. For example, "loss or damage" refers to the covered property, and "losses insured" includes damage by fire and lightning. The loss-settlement provisions describe the loss as "the cost to repair or replace with similar construction and for the same use on the presses shown in the Declaration, the damaged part of the property." The appraisal provisions state that when the parties dispute the "amount of the loss," either the insured or the insurer may demand the appraisal panel "set the amount of the loss." In doing so, the appraisal panel must "state separately" the ACV and replacement cost value.

Reading these provisions together and giving effect to each provision, we determine that "the loss" in the loss-payable endorsement may be reasonably interpreted as the ACV, repair cost value, or replacement cost value for the "damaged part of the property." Because "the loss" is susceptible to more than one reasonable interpretation, we conclude that the loss-payable endorsement excluding interest accrual on "the loss" is ambiguous.[1]

[1] State Farm appears to argue the no-interest language in the loss-payable endorsement is not an exclusion. State Farm reasons that Wesser's policy "defines the accrual date for interest; it does not forbid interest in all circumstances." We are not persuaded. First, State Farm explicitly argues that the no-interest language is unambiguous and contends that the

Ambiguities in insurance-policy language are interpreted in favor of the insured, and exclusions are narrowly interpreted. *King's Cove Marina, LLC,* 958 N.W.2d at 316. If "the loss" is narrowly interpreted in favor of the insured to be the ACV, then Wesser is entitled to preaward interest on the replacement cost value awarded by the appraisers. Thus, the loss-payable endorsement in Wesser's policy does not exclude Wesser's claim for preaward interest on the replacement cost value in the appraisal award as provided in Minn. Stat. § 540.09.[2]

Poehler supports our conclusion. In *Poehler*, the insurer argued preaward interest on an appraisal award was excluded by language in that policy's loss-payable provision and the standard fire policy set out in Minn. Stat. § 65A.01 (2020) (standard fire policy). *Poehler*, 899 N.W.2d at 138. The supreme court rejected both arguments and held the insured was not precluded from recovering preaward interest under Minn. Stat. § 549.09. *Id*. at 143, 145. Although the loss-payable language considered in *Poehler* is different from that found in Wesser's policy, the supreme court's reasoning is helpful for two reasons.

First, the supreme court held the loss-payable provision in Poehler's policy did not limit preaward interest because the provision was silent on when preaward interest begins

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language "bars" or "precludes" Wesser's claim for preaward interest. Similarly, the district court concluded that the no-interest language "explicitly excluded" any interest. Second, as explained in *Poehler*, "absent contractual language explicitly precluding preaward interest, an insured may recover interest on an appraisal award for fire insurance loss." 879 N.W.2d at 142. Here, the no-interest language in Wesser's policy purports to limit the amount of preaward interest that an insured may recover for fire insurance loss. Thus, the no-interest language is an exclusion or limit on the loss covered by Wesser's policy.

[2] Wesser alternatively argues "the loss" is unambiguous and different from the appraisal award. We disagree for the reasons stated in this opinion.

to accrue. *Id*. at 143. Though the insurer "was free to contract with Poehler on the accrual of interest," the insurer did not "explicitly prohibit preaward interest." *Id*. Second, the supreme court recognized that the terms of the standard fire policy are "mandatory" but also held insurers "may include additional or different terms into their policies that offer more coverage than the statutory minimum." *Id*. at 145-46 (quotation omitted). The supreme court concluded that Poehler's policy afforded greater coverage than the standard fire policy because his policy failed to include the standard-fire-policy language that limited "interest thereon from the time when the loss becomes payable." *Id*. at 145; *see* Minn. Stat. § 65A.01, subd. 3. In short, the supreme court held the standard-fire-policy language limiting interest did not apply to appraisal awards under Poehler's policy. *Id*.

State Farm relies on arguments much like those made by the insurer in *Poehler*. State Farm argues that the loss-payable endorsement in Wesser's policy limits accrual of preaward interest on "the loss" to when the loss becomes payable and that Wesser's loss did not become payable until after the appraisal award was filed with State Farm. The supreme court in *Poehler*, however, held that an insured may recover preaward interest on an appraisal award under Minn. Stat. § 549.09 "absent contractual language *explicitly* precluding preaward interest." 899 N.W.2d at 142 (emphasis added). Ambiguous language does not explicitly preclude preaward interest. *See King's Cove Marina, LLC*, 958 N.W.2d at 316 (stating ambiguous language is construed "in favor of coverage" and exclusions are read "narrowly against the insurer"); *Wolters*, 831 N.W.2d at 636 ("[a]ny ambiguity is resolved in favor of the insured"). For the reasons stated above, we hold the loss-payable endorsement in Wesser's policy does not explicitly exclude preaward interest.

Nothing in Minnesota's standard fire policy alters this conclusion. The standard fire policy provides coverage for the amount of "the loss," which the standard fire policy defines as ACV. Minn. Stat. § 65A.01. Replacement cost value is not mentioned in the standard fire policy. Because Wesser's policy defines "the loss" as covering the ACV, repair cost value, and replacement cost value, it provides greater coverage than the standard fire policy. Thus, for reasons similar to those discussed by the supreme court in *Poehler*, we conclude that the standard-fire-policy language limiting interest does not apply to Wesser.

State Farm alternatively argues Wesser is not entitled to preaward interest computed from the date of written notice of his claim because Wesser received the ACV for his claim in July 2020. In other words, State Farm argues that, at most, Wesser may recover preaward interest on the difference between the appraisal award for replacement cost value and the amount State Farm paid for the ACV, computed from the time Wesser received the ACV payment.

We reject this argument for two reasons. First, as Wesser argues, the district court did not compute preaward interest because it determined Wesser was not entitled to preaward interest. We seldom address issues that were not decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Second, even if we consider State Farm's argument, we are not persuaded. No language in the homeowner's policy limits preaward interest based on *when* the insured receives the ACV for the loss. In contrast, Minn. Stat. § 549.09, subd. 1(b), provides that preaward interest "shall be computed" from "the time of a written notice of claim."

Still, State Farm correctly points out that a recovery of preaward interest on the appraisal award of replacement cost value may lead to a windfall for Wesser. State Farm reasons that replacement cost value includes ACV, and Wesser received State Farm's payment for ACV more than seven months before the appraisal award for replacement cost value. This reasoning is compelling because the preaward-interest statute seeks to compensate "for the true cost of money damages incurred." *Blehr v. Anderson*, 955 N.W.2d 613, 618 (Minn. App. 2021) (quotation omitted).

We need not consider the argument further, however, because Wesser modified his requested relief during oral argument to address State Farm's concern. In *Elm Creek Courthome Ass'n v. State Farm Fire and Casualty Co.*, this court determined an insurer was entitled to offset preaward interest on an appraisal award based on preaward payments received by the insured. 971 N.W.2d 731, 743 (Minn. App. 2022). Relying on *Elm Creek*, Wesser seeks preaward interest on the "unpaid balance" of the replacement cost value. In other words, Wesser requests preaward interest on the difference between the replacement cost value and ACV paid by State Farm.

In sum, the loss-payable endorsement excluding interest accrual on "the loss" does not explicitly exclude preaward interest under Minn. Stat. § 549.09 for an appraisal award of replacement cost value. Based on the applicable law and policy language, Wesser is entitled to preaward interest computed from the time of written notice of claim on the replacement cost value awarded by the appraisal panel, less the ACV paid by State Farm.

Thus, we reverse summary judgment for State Farm and remand for the computation of preaward interest and the entry of judgment for Wesser.

Reversed and remanded.