STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0367

Sheila Oliver, et al.,
Appellants,

vs.

State Farm Fire and Casualty Insurance Company,
Respondent.

Filed January 22, 2019
Reversed and remanded
Bratvold, Judge

Hennepin County District Court
File No. 27-CV-17-16316

Alexander M. Jadin, Timothy D. Johnson, Jeffrey J. Woltjen, Smith Jadin Johnson, PLLC, Bloomington, Minnesota (for appellants)

Scott G. Williams, William L. Moran, Lehoan T. Pham, C. Todd Koebele, HKM, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Bratvold, Judge; and Klaphake, Judge.[*]

S Y L L A B U S

I. The 90-day limit to file a motion to modify an arbitration award under Minn. Stat. § 572B.24(a) (2018) does not apply to an insured's request for preaward interest following an appraisal award.

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

II. An insurance appraisal panel determines the amount of loss under the policy and lacks authority to grant preaward interest under Minn. Stat. § 549.09, subd. 1(b) (2018).

O P I N I O N

BRATVOLD, Judge

Appellants Sheila and William Oliver challenge the district court's judgment denying their motion to grant preaward interest from their insurer, respondent State Farm Fire and Casualty Insurance Company (State Farm), for damages awarded by an appraisal panel. The district court characterized the Olivers' motion as a motion to modify the appraisal award and denied the motion as untimely.

We reverse the district court's decision for three reasons. First, the Olivers were unambiguously entitled to preaward interest for pecuniary damages awarded by the appraisal panel and may claim preaward interest without proving wrongdoing by the insurer or breach of contract. *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 140-41 (Minn. 2017) (interpreting and applying Minn. Stat. § 549.09, subd. 1(b)). Second, Minnesota caselaw establishes that an appraisal panel determines the amount of loss under the insurance policy. Consequently, an appraisal panel lacks authority to grant preaward interest, which is a statutory right that arises independent of the insurance policy.

Third, the district court erred in applying a 90-day filing deadline to the Olivers' motion. Precedent establishes that the Minnesota Uniform Arbitration Act (MUAA), Minn. Stat. §§ 572B.01-.31 (2018), applies to insurance appraisal awards, in addition to arbitration awards. And, under the MUAA, Minn. Stat. § 572B.24(a) requires that a party seeking to modify an arbitration award on specified grounds must do so within 90 days of

an arbitrator's decision. Because an appraisal panel's authority is limited to determining amount of loss under the policy, a motion to modify an appraisal award may not include a request for preaward interest, which arises from statute and not the policy. We conclude that section 572B.24 does not apply to the Olivers' motion for preaward interest.

Thus, we reverse the district court's decision denying the Olivers' motion for preaward interest and remand to the district court for proceedings consistent with this opinion.

FACTS

On May 11, 2015, a fire occurred at the Olivers' home in Edina. On May 20, 2015, the Olivers submitted a claim to State Farm under their homeowners' insurance policy. The parties were "unable to agree on the measurement of the loss." In January 2016, the Olivers sent State Farm an email demanding an appraisal under the terms of the insurance policy.[1] The Olivers' email did not include a request for preaward interest.

On March 14, 2016, after hearing testimony and receiving evidence from the parties, the appraisal panel issued an award in favor of the Olivers; the total award was $1,143,778.39. State Farm paid the appraisal award.

[1] It appears that the demand letter, attached to the email, was mistakenly dated January 6, 2015, which is before the fire. The parties' appear to agree that the Olivers demanded appraisal in January 2016.

On August 8, 2017, in a letter to State Farm, the Olivers demanded $94,009.18 in preaward interest. State Farm refused to pay preaward interest "based on the two-year limitation clause provided in the [Olivers'] homeowners' policy."[2]

On October 25, 2017, the Olivers filed a motion in district court requesting that the court (1) confirm the appraisal award under Minn. Stat. § 572B.22, and (2) grant preaward interest on the appraisal award under Minn. Stat. § 549.09, subd. 1(b). The Olivers argued that Minnesota law "unambiguously provide[s] for preaward interest on insurance appraisal awards." The Olivers also contended, based on the language in section 549.09, that "[i]nterest accrues from the date of the first written notice of the claim" through the date of the appraisal award. The first written notice of the Olivers' claim occurred on May 20, 2015, and the appraisal award was issued on March 14, 2016. Because there were 300 days between the dates of the first written notice and the appraisal award, the Olivers argued that State Farm owed them $94,009.18 in preaward interest, after applying the statutory interest rate. Finally, the Olivers asserted that, because their claim to preaward interest was a statutory right, it was not subject to the homeowners' policy's "limiting language," and therefore, that they did not have to request preaward interest within the two years specified in the policy.

State Farm opposed the Olivers' request on three grounds. First, State Farm argued that the Olivers' request amounted to a new legal action that had to be dismissed for

[2] The relevant language in the policy states: "Suits Against Us. No action shall be brought unless there has been compliance with the policy provisions and the action is started within two years after the occurrence causing loss or damage."

insufficient service of process because no summons and complaint were served. Second, State Farm argued there was no award to confirm because it had already paid the appraisal award. Third, State Farm argued that the Olivers' claim was untimely because it was made more than two years after the date of loss, contrary to the policy's requirement, and filed more than 90 days after notice of the appraisal award, contrary to Minn. Stat. § 572B.24.

The district court issued an order granting the Olivers' motion to confirm the award in the amount of $1,143,778.39. With regard to the preaward-interest request, the district court agreed with State Farm that the Olivers had made a motion to modify the appraisal award under the MUAA. Because the Olivers proceeded under the MUAA, the district court reasoned that their request was "subject to its limitations" and not "obviate[d] [from] the need to seek [preaward interest] in an appropriate procedural fashion." Because the Olivers failed to comply with the 90-day filing deadline in section 572B.24(a), the district court denied their motion for preaward interest.

The Olivers asked for leave to file a motion for reconsideration, arguing that the district court incorrectly characterized their motion as a motion to modify because their motion for preaward interest under section 549.09 did not require a modification of the award. The Olivers also argued that the appraisal panel was not authorized to grant preaward interest, which can only be decided by the district court. In short, the Olivers asked the district court to grant preaward interest as authorized by statute.

The district court denied the reconsideration request in a letter and filed an amended order with some additional legal analysis. The amended order again granted the Olivers'

motion to confirm the appraisal award, denied the motion for preaward interest, and directed entry of an amended judgment. The Olivers appeal.

ISSUE

Did the district court err in denying the Olivers' motion for preaward interest?

ANALYSIS

The availability of preaward interest and the interpretation of the MUAA are both statutory issues that we review de novo. *See KSTP-TV v. Metro. Council*, 884 N.W.2d 342, 345 (Minn. 2016) (statutory interpretation); *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 390-91 (Minn. App. 2004) (prejudgment interest), *review denied* (Minn. Aug. 25, 2004). The goal of statutory interpretation and construction "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 (2018); *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716 (Minn. 2014). When the legislature's intent is clearly discernible from a statute's plain and unambiguous language, an appellate court interprets the language according to its plain meaning. *State v. Kelbel*, 648 N.W.2d 690, 701-02 (Minn. 2002).

A. The Olivers are statutorily entitled to preaward interest.

Section 549.09, subdivision 1(b), states, in relevant part:

> 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 the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first, except as provided herein. . . . Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest shall not be awarded on the following:

> (1) judgments, awards, or benefits in workers' compensation cases, but not including third-party actions;
> (2) judgments or awards for future damages;
> (3) punitive damages, fines, or other damages that are noncompensatory in nature;
> (4) judgments or awards not in excess of the amount specified in section 491A.01; and
> (5) that portion of any verdict, award, or report which is founded upon interest, or costs, disbursements, attorney fees, or other similar items added by the court or arbitrator.

Minn. Stat. § 549.09, subd. 1(b). Preaward interest is statutory and not contractual. *Schwickert, Inc. v. Winnebago Seniors, Ltd.*, 680 N.W.2d 79, 88 (Minn. 2004).

In *Poehler*, the supreme court interpreted section 549.09 and held that it "plainly and unambiguously provides preaward interest on pecuniary damages—including those awarded in insurance appraisals—that are not otherwise excluded by the statute." 899 N.W.2d at 140 (quotation and footnote omitted). The court also determined that section 549.09 "does not require a finding of wrongdoing" for a plaintiff to recover preaward interest on an insurance appraisal award. *Id.* at 139. *Poehler* concluded that "absent contractual language explicitly precluding preaward interest, an insured may recover preaward interest on an appraisal award for a fire insurance loss." *Id.* at 142.

Relying on *Poehler*, this court, in *K & R Landholdings, LLC v. Auto-Owners Insurance*, rejected the insurer's argument that the two-year limitation period in the policy barred the insured's claim for preaward interest. 907 N.W.2d 658, 661-62 (Minn. App. 2018). We reasoned that the right to receive preaward interest is "statutory, not contractual," and noted that the policy language did not explicitly mention preaward interest. *Id.* at 662. Because "nothing in the plain language of the policy addresses [the

insured's] right to receive preaward interest," we held that the two-year limitations period in the policy did not bar the insured's claim. *Id.*

Here, like the policy held by the appellant in *K & R Landholdings*, the Olivers' homeowners' insurance policy does not contain any language limiting or prohibiting preaward interest.[3] As noted above, *Poehler* held that section 549.09 "unambiguously provides for preaward interest" on an appraisal award. 899 N.W.2d at 140. Therefore, we conclude that the Olivers are entitled to recover preaward interest on the appraisal award.

B. The appraisal panel lacked authority to award the Olivers preaward interest.

It is undisputed that the Olivers did not seek preaward interest from the appraisal panel and, in fact, did not demand preaward interest until after the appraisal award was issued and paid by State Farm. State Farm contends that, because the Olivers first sought preaward interest after the appraisal award was issued, their motion was one to modify the appraisal award. This argument assumes that the appraisal panel would have been authorized to grant preaward interest. The district court determined that the Olivers "could, and should have, asked for preaward interest in the appraisal . . . [because] [i]n most cases the award is a mathematical calculation within the authority of the appraisers to administer." Thus, we consider whether an insurance appraisal panel has the authority to grant preaward interest.

[3] On appeal, State Farm does not reassert its earlier claim that the policy's two-year limit on actions against the insurer applies to the Olivers' preaward interest claim. We assume this is because *K & R Landholdings* was issued after State Farm argued dispositive motions in this case and that opinion appears to conclusively resolve the issue.

An *arbitration* panel undoubtedly has authority to grant preaward interest. *See Hedlund v. Citizens Sec. Mut. Ins. Co.*, 377 N.W.2d 460, 464 (Minn. App. 1985) ("[T]he arbitrators could have awarded interest on the award from the date of the award to the date of payment."); *see also* Minn. Stat. § 549.09, subd. 1(b) ("[I]nterest on the judgment or award shall be calculated by the judge or arbitrator."). But there are important differences between arbitration panels and appraisal panels. Arbitration panels can make liability determinations and render legal determinations. *Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988) ("Generally, arbitration law states that arbitrators are the final judges of both law and fact.").

Appraisal panels, in contrast, are limited in their authority to determining "the amount of actual value and loss" under the policy, as provided in Minnesota's standard fire insurance policy. *See* Minn. Stat. § 65A.01, subd. 3 (2018). As explained in *Poehler*, use of the standard fire policy is mandatory and its provisions cannot be "omitted, changed, or waived." 899 N.W.2d at 144-45. Insurers may insert "additional or different terms into their policies that offer more coverage than the statutory minimum." *Id.* at 145. Here, the insurance policy covering the Olivers' fire loss provides that the appraisal panel determines the "amount of loss." Because preaward interest arises under the statute and not under the insurance policy, *see Schwickert*, 680 N.W.2d at 88, the appraisal panel is not authorized to determine preaward interest.

The district court concluded otherwise, stating that preaward interest is simply a "mathematical calculation" and reasoning that the Olivers' preaward interest was ascertainable on the date of the appraisal award, therefore, the appraisal panel was

authorized to award it. In making this ruling, the district court relied on *Hedlund v. Citizens Security Mutual Insurance Co.*, 377 N.W.2d at 464. But in *Hedlund*, this court determined that an *arbitration* panel was authorized to grant an interest award when the arbitration was for the entire claim and the "amount of interest was ascertainable by computation" on the date of the award. 377 N.W.2d at 464.[4]

We conclude that a request for preaward interest is not merely a mathematical calculation but a legal determination. To grant preaward interest, a court must first interpret the applicable policy to ascertain whether, as directed in *Poehler*, the policy omits terms from the standard fire policy, or includes "additional" terms that offer "more coverage." 899 N.W.2d at 144-45. Next, a court must make several legal determinations related to section 549.09, including when the prevailing party commenced an action, made a demand, or gave notice of claim; the amount of the award subject to interest; the rate of interest; and when interest stopped accruing. *See* Minn. Stat. § 549.09, subd. 1(b).

The Minnesota Supreme Court has specifically held that an appraisal panel "may not construe the policy or decide whether the insurer should pay." *Quade v. Secura Ins.*, 814 N.W.2d 703, 706 (Minn. 2012). *Quade* noted that an appraisal panel's authority to decide questions of law and fact is limited to those "which are involved as mere incidents to a determination of the amount of loss." *Id.* at 707. *Quade* also held that an appraisal

[4] Two other cases cited by respondent State Farm on appeal are inapplicable for the same reason: *Wanschura v. W. Nat'l Mut. Ins. Co.*, 389 N.W.2d 927, 928 (Minn. App. 1986), *review denied* (Minn. Aug. 27, 1986); *Nat'l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 749 (Minn. 1984). In both of these cases, the request for prejudgment interest was either granted or denied by an *arbitration* panel.

panel's legal determinations are not "final and conclusive," and can be challenged and reviewed by a district court. *Id.* at 707-08. De novo review of an appraisal panel's legal determinations stands in stark contrast to deferential review of an arbitrator's legal decisions, which will not be reversed for a mistake of law. *See Johnson*, 426 N.W.2d at 421.

State Farm asks us to follow *David A. Brooks Enterprises, Inc. v. First Systems Agencies*, which held that an appraisal panel had authority to grant preaward interest. 370 N.W.2d 434, 435 (Minn. App. 1985). We conclude that *David A. Brooks* is not relevant precedent for three reasons. First, at the time that *David A. Brooks* was decided, section 549.09 did not authorize *preaward* interest; instead, the statute authorized *prejudgment* interest from the time of verdict. *See id.* at 436 (applying Minn. Stat. § 549.09, subd. 1 (1982) ("When the judgment is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk as provided in this section and added to the judgment.")). Second, *David A. Brooks* preceded the supreme court's 2012 decision in *Quade*, which clarified that an appraisal panel has limited authority to make legal determinations. 814 N.W.2d at 707-08. Without the benefit of *Quade*, *David A. Brooks* relied on the deferential standard of review for an arbitrator's legal decisions and held that this court would uphold an appraisal award, "even in the face of a mistake of law." 370 N.W.2d at 436.

Third, *David A. Brooks* contains no analysis of an appraisal panel's authority. 370 N.W.2d at 435-36. In contrast, the supreme court's subsequent decision in *Quade* provides

a detailed analysis of an appraisal panel's authority. *See* 814 N.W.2d at 707-08. For all of these reasons, to the extent that *David A. Brooks* held that an appraisal panel has authority to grant preaward interest, it is expressly overruled.

In sum, because an appraisal panel lacks authority to make legal determinations and preaward interest is a statutory right that requires a legal determinations, we conclude that an appraisal panel lacks authority to grant preaward interest.

C. The district court erred in applying the 90-day filing deadline from Minn. Stat. § 572B.24(a) to the Olivers' motion for preaward interest.

The district court concluded that the Olivers "failed to seek timely modification of the award under" Minn. Stat. § 572B.24, and thus, denied their motion for preaward interest. Under section 572B.24:

> Upon motion filed within 90 days after the movant receives notice of the award in a record pursuant to section 572B.19 or within 90 days after the movant receives notice of an arbitrator's award in a record on a motion to modify or correct an award pursuant to section 572B.20, the court shall modify or correct the award if:
> (1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
> (2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
> (3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

Minn. Stat. § 572B.24(a). The parties disagree whether this provision applies to the Olivers' motion for preaward interest.

It is true that Minnesota courts often treat appraisals as equivalent to arbitration proceedings and subject them to the same legal standards. In particular, this court has previously held that appraisal decisions are subject to the MUAA. *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. App. 2010). Further, Minnesota courts have used the terms "arbitration" and "appraisal" interchangeably. *Johnson v. Mut. Serv. Cas. Ins. Co.*, 732 N.W.2d 340, 345-46 (Minn. App. 2007) (collecting numerous Minnesota cases in which terms were used interchangeably), *review denied* (Minn. Aug. 21, 2007).

Thus, section 572B.24(a) applies to motions to modify an appraisal award. However, that begs the question of whether the Olivers' motion for preaward interest is properly characterized as a motion to modify the award. We have already stated that the appraisal panel lacked authority to grant any request for preaward interest under Minnesota law. Additionally, section 572B.24(a) provides limited grounds for modification, such as mistakes of form, description, and calculation of the award. *See* Minn. Stat. § 572B.24(a).

We conclude that a motion for preaward interest does not constitute a request to modify an appraisal award under Minn. Stat. § 572B.24(a) for three reasons. First, a claim for preaward interest arises from Minnesota statute and not the insurance policy. *Schwickert*, 680 N.W.2d at 88. Second, granting preaward interest involves legal determinations that are outside the appraisal panel's authority. *See Quade*, 814 N.W.2d at 706-08. And third, a motion for preaward interest on an appraisal award does not fall within the narrow grounds for modification specified in section 572B.24(a). *See generally Adler v. Safeco Ins. Co.*, 413 N.W.2d 566, 568 (Minn. App. 1987) (concluding that insurer's

request that the arbitration panel modify its award to exclude prejudgment interest was not authorized by the modification statute because it sought a substantive change that went beyond "clarifying the award").

Accordingly, the district court erred in applying the MUAA's 90-day filing deadline for motions to modify an appraisal award to the Olivers' motion for preaward interest.[5]

D E C I S I O N

We conclude that the district court erred in denying the Olivers' motion for preaward interest on the appraisal award. The right to preaward interest arises from the statute, not the policy; therefore, the appraisal panel was not authorized to grant preaward interest and the 90-day filing deadline in section 572B.24(a) did not apply to a motion for preaward interest. Because the district court erroneously denied the Olivers' motion for preaward interest, we reverse the court's decision and remand for further proceedings consistent with this opinion.

Reversed and remanded.

[5] Although we decide that the 90-day limitation in section 572B.24(a) does not apply to the Olivers' request for preaward interest, we note that it is unclear how much time the Olivers had to a bring a claim for preaward interest. The statute is silent on any deadline for seeking preaward interest. Section 549.09, subdivision 1(b), states that the "action must be commenced within two years of a written notice of claim for interest to begin to accrue," but *Poehler* determined that no underlying civil action is required to request preaward interest. *See* 899 N.W.2d at 139-40. We do not decide this issue because it is not before us in this appeal.