FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D23-0376
LT Case No. 16-2021-SC-020211

FLORIDA FARM BUREAU
GENERAL INSURANCE COMPANY,

Appellant,

v.

RICHARD JONES and NANCY
JONES,

Appellees.

On appeal from the County Court for Duval County.
Rhonda Denise Peoples-Waters, Judge.

Ezequiel Lugo, of Banker Lopez Gassler P.A., Tampa, for Appellant.

Andrew A. Steadman, of Weisser Elazar & Kantor, PLLC, Fort Lauderdale, for Appellees.

April 9, 2024

PRATT, J.

This appeal requires us to decide the applicability of a hurricane deductible to a loss caused by a local hailstorm unconnected to any hurricane. Based on the pertinent policy language, we hold that the hurricane deductible cannot be applied to Appellees' loss. We therefore affirm the trial court's summary judgment in favor of Appellees.

I.

On July 31, 2020, the National Hurricane Center placed several Florida locales under a hurricane watch as Hurricane Isaias neared Florida's east coast. A hurricane warning for the region was soon issued. Various portions of the state remained under a hurricane warning until 5:00 a.m. on August 2, when the last-issued hurricane warning for any part of Florida expired.

On August 4, a severe hailstorm caused damage to Appellees' Jacksonville-area home. At the time of the hailstorm, Isaias was located over Rutland, Vermont, and had weakened to a tropical storm, with none of its rain bands anywhere near Florida. Appellees would later offer an unrebutted meteorologist's report opining that the hailstorm that caused their loss was a local weather event bearing no meteorological connection to Isaias.

Appellees submitted a claim under their homeowner's insurance policy. Florida Farm Bureau ("Insurer") paid the claim but subtracted its hurricane deductible. Appellees then sued Insurer for breach of contract, contending that the hurricane deductible did not apply to their loss. The parties filed cross-motions for summary judgment, and the trial court granted summary judgment to Appellees. Insurer then appealed.

II.

We review *de novo* the trial court's summary judgment. *See ARR Invs., Inc. v. Bautista REO US, LLC*, 278 So. 3d 931, 933 (Fla. 5th DCA 2019). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a). Under Florida law, "[i]nsurance contracts are construed in accordance with the plain language of the policies as bargained for by the parties." *Prudential Prop. & Cas. Ins. v. Swindal*, 622 So. 2d 467, 470 (Fla. 1993). Moreover, "[w]e read policies as a whole and undertake to give every provision its 'full meaning and operative effect.'" *Parrish v. State Farm Fla. Ins.*, 356 So. 3d 771, 774 (Fla. 2023) (quoting *Auto-Owners Ins. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000)).

A.

We reproduce here, in its entirety, the hurricane deductible endorsement appended to Appellees' homeowner's insurance policy:

POLICY NUMBER:

HOMEOWNERS
FHO 03 55A 05 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALENDAR YEAR HURRICANE DEDUCTIBLE (PERCENTAGE) WITH SUPPLEMENTAL RECORD KEEPING REQUIREMENT – FLORIDA

ALL FORMS EXCEPT HO 0004 AND HO 0006

SCHEDULE*

Calendar Year Hurricane Deductible Amount:

*Entries may be left blank if shown elsewhere in this policy for this coverage.

A. Loss By Windstorm During A Hurricane

With respect to Paragraphs **C.** and **D.**, coverage for loss caused by the peril of windstorm during a hurricane which occurs anywhere in the state of Florida, includes loss to:

1. The inside of a building; or
2. The property contained in a building caused by:
   a. Rain;
   b. Snow;
   c. Sleet;
   d. Hail;
   e. Sand; or
   f. Dust;

If the direct force of the windstorm damages the building, causing an opening in a roof or wall and the rain, snow, sleet, hail, sand or dust enters through this opening.

B. Hurricane Described

1. A hurricane means a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service.
2. A hurricane occurrence:
   a. Begins at the time a hurricane watch or warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service; and
   b. Ends 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.

C. Calendar Year Hurricane Deductible Described

A hurricane deductible issued by us or another insurer in our insurer group:

1. Can be exhausted only once during each calendar year; and
2. Applies to loss to Covered Property caused by one or more hurricanes during each calendar year.

The dollar amount of the calendar year hurricane deductible is determined by multiplying the Coverage **A** limit of liability shown in the Declarations by the percentage amount shown in the Schedule above.

A minimum deductible of $500 applies.

D. Application of Calendar Year Hurricane Deductible

1. In the event of the first windstorm loss caused by a single hurricane occurrence during a calendar year, we will pay only that part of the total of all loss payable under Section I – Property Coverages that exceeds the calendar year hurricane deductible stated in the Schedule.
2. With respect to a windstorm loss caused by the second, and each subsequent, hurricane occurrence during the same calendar year, we will pay only that part of the total of all loss payable under Section I – Property Coverages that exceeds the greater of:
   a. The remaining dollar amount of the calendar year hurricane deductible; or
   b. The deductible that applies to fire that is in effect at the time of the loss.

The remaining dollar amount of the calendar year hurricane deductible is determined by subtracting all previous windstorm losses caused by hurricanes during the calendar year from the calendar year hurricane deductible.

3. If:
   a. Covered property is insured under more than one policy issued by us or another insurer in our insurer group; and
   b. Different hurricane deductibles apply to the same property under such policies;

   Then the hurricane deductible applicable under all such policies, used to determine the total of all loss payable under Section I – Property Coverages shall be the highest amount stated in any one of the policies.
4. When a renewal policy is issued by us or an insurer in our insurer group, or we issue a policy that replaces one issued by us or an insurer in our insurer group, and the renewal or replacement policy takes effect on a date other than January 1st of a calendar year, the following provisions apply:
   a. If the renewal or replacement policy provides a lower hurricane deductible than the prior policy, and you incurred loss from a hurricane under the prior policy in that same calendar year, the lower hurricane deductible will not take effect until January 1st of the following calendar year.
   b. If the renewal or replacement policy provides a lower hurricane deductible than the prior policy and you have not incurred a hurricane loss in that same calendar year, the lower hurricane deductible will take effect on the effective date of the renewal or replacement policy.
   c. If the renewal or replacement policy provides a higher hurricane deductible than the prior policy, the higher hurricane deductible:
      (1) Will take effect on the effective date of the renewal or replacement policy; and
      (2) Shall be used to calculate the remaining dollar amount of the hurricane deductible described in Paragraph 2.
5. We require that you maintain receipts or other records of such hurricane losses that are below the hurricane deductible, and provide us with such receipts as often as we reasonably require, so that we may consider the amount of such loss when adjusting claims for subsequent hurricane occurrences that occur during the calendar year.

E. Loss By Windstorm That Is Not A Declared Hurricane

Refer to the policy declarations for the deductible that applies to windstorm loss if the circumstances of the loss described above do not apply.

All other provisions of this policy apply.

The parties center their dispute on paragraph D.1. of the endorsement. That paragraph provides: "In the event of the first windstorm loss caused by a single hurricane occurrence during a calendar year," Insurer "will pay only that part of the total of all loss payable . . . that exceeds the calendar year hurricane deductible stated in the Schedule." In turn, paragraph B.2. defines a "hurricane occurrence" as a period that "[b]egins at the time a

hurricane watch or warning is issued for any part of Florida," and "[e]nds 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of" the state.

The parties agree that Appellees' loss occurred *during* a "hurricane occurrence" as their policy endorsement defines the term, because the loss occurred less than 72 hours following termination of the last-issued hurricane warning for any part of Florida. They differ, however, over whether paragraph D.1. contains a meaningful causation element. Appellees contend that a hurricane did not cause their loss because the hailstorm was a local weather event with no connection to Isaias. Insurer urges, however, that any windstorm loss that occurs during a "hurricane occurrence" will incur the deductible, whether or not the windstorm bore any connection to the hurricane.

At the outset, we note that it's a bit odd to speak of a "hurricane occurrence"—which the endorsement defines as a time period—"causing" a loss. In ordinary usage, hurricanes cause losses. Windstorms cause losses. Windstorms during hurricane occurrences cause losses. But time periods do not. Nonetheless, the language of causation is the language that paragraph D.1. employs.

Given this imprecise policy language, the parties are constrained to offer imperfect interpretations of paragraph D.1. Were their competing interpretations both reasonable, we would hold any ambiguity against Insurer. *See Swindal*, 622 So. 2d at 470 ("Ambiguities are interpreted liberally in favor of the insured and strictly against the insurer who prepared the policy."); *see also State Farm Mut. Auto. Ins. v. Pridgen*, 498 So. 2d 1245, 1248 (Fla. 1986) (explaining that this canon applies "[o]nly when a genuine inconsistency, uncertainty, or ambiguity in meaning remains after resort to the ordinary rules of construction"). However, we need not resort to this "tie goes to the insured" canon because the parties' interpretations are *not* both reasonable. While Appellees collapse the term "hurricane occurrence" into the term "hurricane," this approach makes sense of paragraph D.1., which establishes causation as a precondition for the deductible. Insurer, on the other hand, would have us excise the paragraph's crucial element—"caused by"—and substitute the word "during" in its

place. That would mark a substantial re-write of paragraph D.1. We must favor an interpretation that gives meaningful effect to paragraph D.1.'s clear causation element over one that doesn't. *See Parrish*, 356 So. 3d at 774.

Appellees' reading, aside from making better sense of paragraph D.1. by retaining its causation element, has another key virtue that Insurer's reading lacks: it gives "full meaning and operative effect," *id.* (quotation marks omitted), to the immediately preceding provision, paragraph C.2. That paragraph provides: "A hurricane deductible . . . [a]pplies to loss to Covered Property *caused by one or more hurricanes* during each calendar year." (Emphasis added). This provision describes the application of the hurricane deductible precisely in the way that Appellees do.[1] Insurer's reading, on the other hand, would deprive paragraph C.2. of its meaning and effect by allowing application of the deductible to losses not caused by any hurricane. We are bound to construe Appellees' policy as an integrated whole, *see* § 627.419(1), Fla. Stat. (2020); *Parrish*, 356 So. 3d at 774, and we therefore cannot adopt an interpretation that injects such an irreconcilable inconsistency. Because Appellees' interpretation is the only reading that harmonizes paragraphs C.2. and D.1., it is the only reasonable interpretation of the endorsement.

[1] The endorsement defines "hurricane" as "a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service." Insurer offered no summary-judgment evidence to counter the meteorologist's opinion that the hailstorm was not part of the "storm system" that the National Hurricane Center designated Hurricane Isaias. In other words, it is undisputed that a "hurricane," as defined in the endorsement, did not cause the loss. *Compare with State Farm Fla. Ins. v. Moody*, 180 So. 3d 1165, 1169 (Fla. 4th DCA 2015) (holding that a tornado was part of the hurricane "storm system" that caused a loss where the tornado hit as the hurricane passed over the property).

B.

Going beyond the policy language, the parties each point to section 627.4025, Florida Statutes (2020),[2] to bolster their positions. That statute contains no mandate or prohibition directed toward insurers, their policies, their coverages and exclusions, or their deductibles. Instead, it defines various terms; namely, "[h]urricane coverage," "[w]indstorm," and "[h]urricane." § 627.4025(2), Fla. Stat. (2020). The parties do not explain what operative legal effect those freestanding statutory definitions might have here. Their unstated premise appears to be that the statute serves a sort of default-setting, gap-filling, or ambiguity-resolving function, supplementing or illuminating the policy's language where it contains a gap or ambiguity. This premise has some authority behind it. "Generally, courts will strive to interpret an . . . insurance policy based on the definitions contained within the policy." *Grant v. State Farm Fire & Cas. Co.*, 638 So. 2d 936, 937 (Fla. 1994). However, if the relevant policy provision contains no applicable definition, "courts may be compelled to search elsewhere for a sensible and appropriate" one. *Id.* This search may lead them to statutes that concern the policy's subject matter, as statutes may provide evidence of "the plain meaning of the term" that the policy uses. *Id.* at 938.

If resort to the statute were appropriate here, the statute would favor Appellees' reading. Insurer notes that the statute defines "[h]urricane coverage" as "coverage for loss or damage caused by the peril of windstorm *during a hurricane*," § 627.4025(2)(a) (emphasis added), and it specifies that "[t]he duration of the hurricane includes the time period" described in Appellees' endorsement, § 627.4025(2)(c). However, the statute defines "[w]indstorm" as, among other things, "hail . . . *caused by or resulting from a hurricane* which results in direct physical loss or damage to property." § 627.4025(2)(b) (emphasis added). Put plainly, this does not describe the hailstorm that caused Appellees' loss. Thus, to the extent that section 627.4025 might shed any light on the meaning of paragraph D.1. of the endorsement—which

[2] The statute was amended in 2023; we cite the version that was in effect when the parties' dispute arose.

pertains to "windstorm" losses—the statute would buttress Appellees' interpretation.

All that said, we reject the parties' invitation to rely on section 627.4025 because resort to the statute is not necessary in this case. The hurricane deductible endorsement does not contain a gap or any reference to section 627.4025, and as we already have explained, it does not allow multiple reasonable interpretations. Indeed, unlike in *Grant*, the parties here do not argue that the endorsement is missing a definition of any pertinent word or phrase. Thus, we follow the general rule, articulated in *Grant*, that we should "strive to interpret" the endorsement based only on the definitions that the endorsement itself contains. 638 So. 2d at 937.

C.

Insurer makes two final appeals—one to precedent, and one to public policy. Neither persuades us to depart from the plain text of the hurricane deductible endorsement.

As for precedent, Insurer relies on *State Farm Florida Insurance Company v. Moody*, 180 So. 3d 1165, 1167 (Fla. 4th DCA 2015). In *Moody*, the insureds filed claims after their condominiums sustained severe damage during Hurricane Jeanne as it hit South Florida. *Id.* at 1166. After their insurer applied its hurricane coverage endorsement rather than the general policy provisions, the insureds sued and claimed that the hurricane coverage endorsement was inapplicable, alleging that "their loss was caused by a tornado or microburst, not a hurricane." *Id.* at 1167. However, "[n]o one disputed that the National Hurricane Center declared the storm system Hurricane Jeanne; the hurricane hit the insureds' condominiums on September 26, which was a day the hurricane warning occurred; and the insureds incurred losses on that day." *Id.*

The Fourth District held for the insurer. It examined the relevant provision of the hurricane coverage endorsement, which applied "[w]hen a hurricane causes the covered dwelling to become uninhabitable." *Id.* at 1166. The court did not construe this language to foreclose insureds from ever disputing whether a hurricane caused their losses. Instead, the court observed that the

endorsement defined "hurricane" as "a *storm system* that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service." *Id.* at 1169 (emphasis in original). It concluded: "[t]here is only one reasonable interpretation of this definition. If the National Hurricane Center names a *storm system* a hurricane, the entire named *storm system*, including the elements of the storm, constitutes the hurricane." *Id.* (emphases in original). In other words, a tornado that spawns during a hurricane, while the hurricane passes over the insured property, is part of the "storm system" that comprises the hurricane. In short, a "hurricane" caused the losses at issue in *Moody*.

This case presents some similar policy language but inverse facts. Here, the deductible "[a]pplies to loss . . . caused by one or more hurricanes," and the endorsement defines "hurricane" as "a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service." However, the hailstorm that caused Appellees' loss did not occur while Isaias passed over their property, but instead while it traversed New England. And unlike the insureds in *Moody*, Appellees have presented unrebutted summary-judgment evidence that their loss was not caused by any part of a storm system that the National Hurricane Center had declared a hurricane. We see no conflict between our holding today and the Fourth District's holding in *Moody*.

Finally, Insurer makes an appeal to public policy. It argues that our interpretation of its hurricane deductible endorsement will jeopardize the availability and affordability of hurricane coverage in Florida. This argument misapprehends our respective roles. It is up to Insurer to craft its policy language and to weigh the costs and benefits of various alternatives; it is up to us to enforce the language that Insurer writes. We must not blur the line between these two very different tasks. *See Swindal*, 622 So. 2d at 470 ("Insurance contracts are construed in accordance with the plain language of the policies as bargained for by the parties.").

III.

For the foregoing reasons, we affirm the trial court's order granting summary judgment to Appellees.

AFFIRMED.

WALLIS and KILBANE, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.
