

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

FIRST PROTECTIVE INSURANCE CO. D/B/A
FRONTLINE INSURANCE CO.,

Appellant,

v.

Case No. 5D19-31

JOSE COLUCCIELLO AND STEFANIA
COLUCCIELLO,

Appellees.

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Opinion filed July 12, 2019

Nonfinal Appeal from the Circuit Court
for Brevard County,
Jeffrey Mahl, Judge.

Jay M. Levy, of Jay M. Levy, P.A., Miami,
and Karen Fultz, of Sheehee & Associates,
P.A., Miami, for Appellant.

Matthew G. Struble, of Struble, P.A., Fort
Lauderdale, for Appellees.

LAMBERT, J.

First Protective Insurance Co. d/b/a Frontline Insurance Co. (“Insurer”) appeals the trial court’s nonfinal order denying its motion to compel appraisal.¹ Under the facts of this

¹ This court has jurisdiction. See Fla. R. App. P. 9.130(a)(3)(C)(iv).

case, because Insurer did not “wholly deny” coverage for its insureds’ loss, we reverse and remand with directions to the trial court to compel an appraisal.

Jose and Stefania Colucciello (“Homeowners”) insured their home with Insurer. As a result of damage sustained to their home due to water intrusion from Hurricane Irma, Homeowners filed a claim with Insurer under their policy of insurance. Insurer timely investigated and thereafter paid Homeowners in excess of \$100,000 on their claim for both mold damage and other interior damage to their home. Insurer, however, declined to pay for certain exterior damages to the home. Homeowners filed a breach of contract action, and Insurer moved to dismiss and to compel an appraisal under the terms of the insurance contract. Following a brief hearing, the trial court entered the unelaborated order now under review, denying the motion.

Because the pertinent facts here are undisputed, we apply the *de novo* standard of review to the order denying the appraisal. See *People’s Tr. Ins. Co. v. Garcia*, 263 So. 3d 231, 233 (Fla. 3d DCA 2019); *People’s Tr. Ins. Co. v. Tracey*, 251 So. 3d 931, 933 (Fla. 4th DCA 2018).

Insurer argues that the trial court erred in denying its motion because the dispute between the parties relates to the total amount of Homeowners’ loss, which it contends is properly determined by appraisers under the terms of the insurance contract. Homeowners respond that the trial court ruled correctly because Insurer denied coverage for the exterior damage to their home and, as such, whether this aspect of their claim is covered under their insurance policy is a determination to be made by the court. See *State Farm Fire & Cas. Co. v. Licea*, 685 So. 2d 1285, 1287 (Fla. 1996) (“A challenge of coverage is exclusively a *judicial question*”) (quoting *Midwest Mut. Ins. Co. v.*

Santiesteban, 287 So. 2d 665, 667 (Fla. 1974))). Insurer disagrees, asserting that it did not “wholly deny” coverage on Homeowners’ claim and that, under such circumstances, the Florida Supreme Court has held this to be not a dispute over coverage but, instead, merely a disagreement between the parties to the insurance contract on the amount of the loss, which is an issue to be determined under the contract by an appraisal. See *Johnson v. Nationwide Mut. Ins. Co.*, 828 So. 2d 1021, 1022 (Fla. 2002). Insurer is correct.

In the instant case, Homeowners submitted one claim under their policy for damage to their home caused by water intrusion. Insurer agreed that this was a covered claim, paid a significant amount of money on the claim to Homeowners or on their behalf, but disagreed with them as to the total amount owed. We conclude that under *Johnson*, coverage was not “wholly denied” by Insurer and, under the terms of the parties’ insurance contract, an appraisal is required to determine the total amount of the loss. Therefore, and consistently with our sister courts that have addressed this issue subsequent to *Johnson*, see *State Farm Ins. Co. v. Sheppard*, 268 So. 3d 1006 (Fla. 1st DCA 2019); *MKL Enters. LLC, v. Am. Traditions Ins. Co.*, 265 So. 3d 730 (Fla. 1st DCA 2019); *Garcia*, 263 So. 3d at 232; *Tracey*, 251 So. 3d at 932, we reverse the trial court’s order and remand with directions to compel an appraisal.

REVERSED and REMANDED, with directions.

EDWARDS and EISNAUGLE, JJ., concur.