STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1352

Ridgewood Bay Resort, Inc.,
Respondent,

vs.

Auto-Owners Insurance Company,
Appellant.

Filed June 20, 2022
Affirmed in part, reversed in part, and remanded
Wheelock, Judge

Sherburne County District Court
File No. 71-CV-19-1066

Charles J. Lloyd, Adam C. Hagedorn, Livgard & Lloyd PLLP, Minneapolis, Minnesota (for respondent)

Beth A. Jenson Prouty, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this insurance-coverage dispute arising from fire damage, appellant-insurer challenges the grant of summary judgment to respondent-owner. Appellant argues the district court (1) erred in determining coverage under an ordinance-or-law endorsement and (2) misapplied the burden to show a genuine issue of material fact on the applicability

of a preexisting-violation exclusion. By notice of related appeal, respondent-owner argues the district court erred in (1) denying its motion to amend the complaint to include a bad-faith claim, (2) overruling its objection to the appraisal panel's award based on a claim that the panel exceeded its authority, and (3) denying its claim for prejudgment interest. Because the district court correctly determined both that the policy language is ambiguous and that the insurer did not meet its burden as to exclusion, did not abuse its discretion in denying the owner's motion to amend, and correctly determined that the appraisal panel did not exceed its scope, we affirm in part. But because it erred in denying prejudgment interest, we also reverse in part and remand.

FACTS

Respondent Ridgewood Bay Resort Inc. owns and operates a lakeside restaurant and bar that caught fire in August 2017. The fire damaged the structure and business personal property in the bar area and caused smoke damage elsewhere in the building. According to Ridgewood Bay, state and county agencies inspected the building following the fire and ordered that the ADA-noncompliant bathrooms and the undamaged kitchen vent hood, kitchen walls and flooring, and septic system be brought up to code before the restaurant could reopen. At all relevant times, appellant Auto-Owners Insurance Company insured Ridgewood Bay under a commercial-property insurance policy containing an ordinance-or-law coverage endorsement (O&L endorsement). The O&L endorsement lists four coverage types, one of which, Coverage A, provides coverage up to the full

building-coverage limit of $400,800, while the other three, Coverages B-D, each cover up to a $10,000 limit, all subject to a $1,000 deductible.[1]

Ridgewood Bay reported the loss to Auto-Owners and filed its claim for coverage. Auto-Owners determined that the insurance policy applied to losses of business personal property damaged in the fire but disputed whether all of the property listed in Ridgewood Bay's inventory was unsalvageable and therefore eligible for coverage. Auto-Owners did not dispute that Ridgewood Bay's building also sustained covered physical damage; however, the parties disagreed on which provisions of the O&L endorsement apply to the work that the state and county agencies must require to bring the building into compliance with applicable codes. Auto-Owners took the position that Ridgewood Bay is limited to Coverage C; thus, Coverage A and Coverage B do not apply. The record shows that litigation commenced before Auto-Owners made any explicit final decision regarding coverage pursuant to the insurance policy and the O&L endorsement for the full scope of work that Ridgewood Bay submitted in its claim.[2]

Ridgewood Bay served Auto-Owners with a complaint asserting breach of contract on the basis that (1) Ridgewood Bay was entitled to the full replacement cost of damaged business-personal-property items under the commercial property policy; (2) Ridgewood Bay was entitled to the full replacement value for the code-required repairs and reconstruction on the undamaged portions of the building under the O&L endorsement;

[1] Only Coverages A, B, and C are at issue in this appeal.

[2] As of the district court's July 2020 order, Auto-Owners had neither paid in full nor denied the claim.

and (3) Auto-Owners refused to issue payment as provided by the policy. The parties filed cross-motions for partial summary judgment on the issue of which coverage provisions of the O&L endorsement apply to the code-required upgrades. Ridgewood Bay asked the district court to find that Coverage A applies to its claim for code-required upgrades. Auto-Owners countered that the only potentially available coverage for code-required upgrades is Coverage C and alleged that questions of fact existed on whether the preexisting-violation exclusion precluded coverage. Ridgewood Bay subsequently moved to amend its complaint under Minn. Stat. § 604.18 (2020), to add a claim of bad faith against Auto-Owners for its handling of the business-personal-property claim.

On the parties' cross-motions for summary judgment, the district court determined that Coverages A, B, and C of the O&L endorsement applied and that the preexisting-violation exclusion did not. The district court denied Ridgewood Bay's motion to amend the complaint. It also incorporated the parties' stipulation for an appraisal into its order, relying on a form proposed by Ridgewood Bay.

Following the appraisal, Auto-Owners moved the district court to enter judgment on the appraisal award without reference to prejudgment interest. Ridgewood Bay opposed the motion, asserting that the appraisal panel exceeded its authority and that any judgment must include prejudgment interest. The district court directed entry of judgment and denied all motions not expressly addressed in its order, including Ridgewood Bay's request for prejudgment interest. Auto-Owners appeals, and Ridgewood Bay filed a notice of related appeal.

DECISION

Auto-Owners asserts that the district court erred in determining both that Coverage A applied to the code-required upgrades and that Auto-Owners had the burden of proving the applicability of the preexisting-violation exclusion to defeat summary judgment. By notice of related appeal, Ridgewood Bay argues that the district court erred in denying its motion to amend its complaint to assert a claim of bad faith, in failing to find that the appraisal panel exceeded its scope, and in denying its claim of entitlement to prejudgment interest. We address each issue in turn.

I. The district court did not err in granting partial summary judgment in favor of Ridgewood Bay on coverage and exclusions.

"We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). "The interpretation of an insurance policy, 'including whether provisions in a policy are ambiguous, is a legal question subject to de novo review.'" *King's Cove Marina, LLC v. Lambert Com. Constr. LLC*, 958 N.W.2d 310, 316 (Minn. 2021) (quoting *Latterell v. Progressive N. Ins. Co.*, 801 N.W.2d 917, 920 (Minn. 2011)). "Language in an insurance policy is ambiguous if it is reasonably susceptible to more than one interpretation." *Midwest Fam. Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 640 (Minn. 2013). But policy endorsements and exclusions "must be construed in terms of the entire contract, and in such a way, if possible, to give effect to all provisions." *Gen. Mills, Inc. v. Gold Medal*

Ins. Co., 622 N.W.2d 147, 151 (Minn. App. 2001) (citing *Bobich v. Oja,* 104 N.W.2d 19, 24-25 (Minn. 1960)), *rev. denied* (Minn. Apr. 17, 2001).

A. The district court did not err in concluding that ambiguous coverage provisions must be construed in favor of Ridgewood Bay and that there is no genuine issue of material fact that Ridgewood Bay suffered a "loss in value" due to code enforcement.

The district court concluded that the coverage provisions are ambiguous because there are at least two reasonable interpretations of each of the terms "demolition" and "required." The court looked to the parties' differing interpretations of "demolition," reasoning that Auto-Owners's limited interpretation of the term to mean a complete leveling or tearing-down of a building was sensible, but that Ridgewood Bay's broader definition of the term to include removing or tearing out parts of a building as a step toward remodeling was also reasonable, noting the affidavits of Ridgewood Bay's construction project manager referring to the "demolition required to bring the building into compliance." The district court also reasoned that the term "requires" could mean the demolition itself must literally be required by the ordinance or law, but that such a reading is far narrower than the ordinary plain meaning of the term.

The district court additionally concluded that undisputed evidence showed Ridgewood Bay suffered a "loss in value" due to code enforcement, relying in part on a Loss Payment provision in the O&L endorsement that references the amount the insured would "actually spend to repair, rebuild or reconstruct the building." The district court therefore concluded that Coverage A applied to code-required upgrades.

Auto-Owners argues that the district court erred in concluding that Coverage A applies to code-required updates, contending that (1) the policy is not ambiguous and, reading the policy as a whole, the sole reasonable interpretation is that only Coverage C applies to code-required remodeling; and (2) there is no "loss in value" to trigger Coverage A.

1. The coverage provisions in the O&L endorsement are ambiguous.

Ridgewood Bay raised the issue of the applicability of Coverage A in its motion for partial summary judgment, asking the district court to determine that Coverage A provides coverage for the code-required upgrades, while Auto-Owners asked the court to determine the scope of Coverages A and B in its cross-motion for partial summary judgment. The district court denied partial summary judgment to Auto-Owners on the scope of coverage under Coverage A and B and granted partial summary judgment to Ridgewood Bay on coverage under Coverage A.

The relevant policy language appears in a section of the O&L endorsement labeled "Coverages." Coverage A reads in part:

> 1. Coverage A – Coverage For Loss to The Undamaged Portion Of The Building.
> With respect to a covered building that has sustained covered direct physical damage, we will pay under Coverage A for the *loss in value of the undamaged portion of the building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building.*

(Emphasis added.)

Coverage B expands on Coverage A as follows:

> 2. Coverage B – Demolition Cost Coverage.
> With respect to a covered building that has sustained covered direct physical damage, we will pay the *cost to demolish and clear the site of undamaged parts of the same building, as a consequence of enforcement of an ordinance or law that requires Demolition* of such undamaged property.

(Emphasis added.)[3]

Coverage C, in part, reads as follows:

> 3. Coverage C – Increased Cost Of Construction Coverage.
> a. With respect to a covered building that has sustained covered direct physical damage, we will pay the *increased cost to*:
> (1) Repair or reconstruct damaged portions of that building; and/or
> (2) *Reconstruct or remodel undamaged portions of that building, whether or not demolition is required when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law.*

(Emphasis added.)

Auto-Owners asserts that Coverages A and B can only have one reasonable meaning, arguing that the common, ordinary understanding of the word "demolition" is destruction, leveling, or razing, not tearing out or removing materials as part of a remodeling project, and that when Coverages A, B, and C are read together, the differences between the coverage applications are apparent. Under Auto-Owners's reading, Coverages A and B apply when an ordinance or code requires demolition of part of the building—whether demolition is expressly included in the code or ordinance, or if a building official

[3] "Demolition" is not defined in the policy.

orders part of the building to be demolished as a requirement of the code or ordinance—whereas Coverage C applies to the cost of repairs or remodeling required by the code or ordinance, including any related demolition.

Ridgewood Bay argues that the phrase "as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts" included in Coverage A and B applies to situations like Ridgewood Bay's, where as a result of enforcement of a code, upgrades are required that cannot be accomplished unless some level of interior demolition takes place. The district court found this interpretation of Coverage A, meaning an ordinance or law requires remodeling of undamaged parts of the building, and demolition is a component of the remodeling, to be reasonable. We agree.

Policy language is ambiguous if susceptible to two or more reasonable interpretations, and any ambiguity is resolved in favor of the insured. *Wolters*, 831 N.W.2d at 636. "In an action to determine coverage," the burden is on the insured to "establish a prima facie case of coverage." *SCSC Corp. v. Allied Mut. Ins. Co.*, 536 N.W.2d 305, 311 (Minn. 1995), *overruled on other grounds by Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910 (Minn. 2009). We conclude that Ridgewood Bay met its burden of establishing coverage by providing another reasonable interpretation of the language in Coverages A and B.

We are unconvinced that Coverage A or B applies only when the demolition itself is required either by the ordinance or law or by its enforcement, but not when the code-required upgrades have a demolition component, because this is not what the language of the coverage provision says. Nor do we agree that this is the only reasonable

interpretation of Coverages A and B, because Coverage C applies in cases where demolition occurs as a consequence of complying with the requirements of an ordinance or law. We observe that Coverage C could also be understood to provide coverage for increased reconstruction costs associated with code compliance in situations involving demolition or no demolition. Such an interpretation would give effect to all provisions. We also note that while dictionary definitions support a contention that the common understanding of "demolish" is to tear down, break apart, or raze,[4] the actions contemplated in the O&L endorsement exist in a building construction and rehabilitation context, in which the idea that one can "demolish" fixtures and interior components, such as cabinets or a sink, is not an uncommon usage of the term. And the Loss Payment provision associated with Coverage A provides coverage for "the amount [insured] would actually spend to *repair*, rebuild or reconstruct the building." (Emphasis added.) This cuts against the contention that "demolition" in Coverage A can only mean razing or leveling the structure because under that interpretation, there would be no repairs to cover.

The district court correctly concluded that the terms "demolition" and "requires" are ambiguous here, given both Auto-Owners's interpretation that demolition only means destruction, leveling, or razing a building or a portion of a building as required by enforcement of a code or ordinance and Ridgewood Bay's interpretation that demolition can mean tearing out a portion of a building or removing materials when remodeling as required to bring the building up to code. Because Coverages A and B are subject to more

[4] *The American Heritage Dictionary of the English Language* 483 (5th ed. 2011) (defining "demolish").

than one reasonable interpretation, they are ambiguous, and thus the contract must be construed in favor of Ridgewood Bay as the insured. *Wolters*, 831 N.W.2d at 636.

2. Ridgewood Bay showed a loss in value as a matter of law.

Auto-Owners further argues that Coverage A cannot apply because the elements in need of code-mandated updates did not sustain any loss in value. Coverage A reads, in relevant part, "we will pay under Coverage A for the *loss in value* of the undamaged portion of the building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building." (Emphasis added.) Auto-Owners additionally points to language in the Loss Payment provision of the O&L endorsement providing that "[w]hen there is a *loss in value* of an undamaged portion of a building to which Coverage A applies," payment is determined as "either the amount spent to repair, rebuild, or reconstruct demolished property . . . or—if the property is not repaired, rebuilt, or reconstructed—for the actual cash value of the building at the time of the loss up to the limit of insurance for Coverage A." Auto-Owners argues that the code-required upgrades do not result in any loss in value for Ridgewood Bay, because the upgrades will ultimately increase the value of the property, citing deposition testimony of Ridgewood Bay's owner acknowledging that if all the code-required upgrades are completed, the value of the building will go up. Auto-Owners asserts that "amounts spent to update property are not amounts being spent to repair, rebuild, or reconstruct demolished property."

Ridgewood Bay argues that it has clearly sustained a loss in value because unless it submits plans to bring the building into compliance and performs the code-required upgrades, county and state officials will not issue permits to finish repairing the damage to

the building caused by the fire, and no certificate of occupancy to operate will be issued, leaving Ridgewood Bay with a damaged, unusable building which is "essentially worthless." In support of this argument, Ridgewood Bay points to a report prepared for Auto-Owners by a third-party forensic-design consultant stating that, as part of the permitting process for fire restoration, the county building official required conversion of the restrooms to meet ADA requirements in compliance with the Minnesota State Building Code, and, without those updates, no permit to repair the fire damage would be issued. The same report also notes that until the noncompliant septic system is updated, and the kitchen walls, floor, ceiling, and vent hood are brought into compliance with Minnesota Health Department rules, Ridgewood Bay is unable to reopen.

We conclude that Ridgewood Bay has sufficiently pointed to facts in the record to demonstrate a loss in value, defeating Auto-Owners's assertion that Coverage A does not apply as a matter of law. We reject Auto-Owners's argument that there can be no loss in value if upgrades occur as part of repairing or rebuilding, as it is possible that properties remodeled or rebuilt due to code-required changes could lose rather than gain value. We agree with the district court's observation that "loss in value cannot be understood independently from costs related to repair, rebuilding, or reconstruction because that is how payment for the loss would be determined" under the Loss Payment provision of the policy.

B. The district court correctly placed the burden on Auto-Owners to show that genuine issues of material fact exist as to the preexisting-violation exclusion.

"An insurer has the burden of proving that a policy exclusion applies." *Henning Nelson Constr. Co. v. Fireman's Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 652 (Minn.

1986) (affirming judgment in favor of insured where insurer did not bring forth evidence that the exclusion was met). "The moving party has the burden of showing an absence of factual issues before summary judgment can be granted." *Anderson v. State, Dep't of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005). "In order to successfully oppose a motion for summary judgment, appellant must extract specific, admissible facts from the voluminous record and particularize them for the trial judge." *Kletschka v. Abbott-Nw. Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *rev. denied* (Minn. Mar. 30, 1988).

The O&L endorsement contains a preexisting-violation exclusion, which reads, "[u]nder this endorsement we will not pay for loss due to any ordinance or law that: (1) You were required to comply with before the loss, even if the building was undamaged; and (2) You failed to comply with." The district court concluded that the burden to prove the exclusion's applicability fell to Auto-Owners as the insurer and that Auto-Owners did not prove that Ridgewood Bay was required to comply with the applicable codes prior to the covered event. Auto-Owners contends that the district court improperly placed the burden of proving the applicability of the exclusion on Auto-Owners rather than placing the burden on Ridgewood Bay, as the party moving for summary judgment, to show that no question of material fact existed regarding whether Ridgewood Bay was required, but failed, to comply with the relevant ordinances prior to the fire.

We note that Ridgewood Bay did not address the exclusion in its initial arguments to the district court supporting partial summary judgment. Auto-Owners, in its memorandum opposing summary judgment, raised as an issue of material fact whether Ridgewood Bay was required to comply with the relevant code requirements before the

loss. In response, Ridgewood Bay argued that there is no dispute that the fire was the triggering event for the order to bring undamaged parts of the property up to code and that while Auto-Owners was "hinting at reliance on" the exclusion, it did not bring any evidence forward to support the application of the exclusion in accordance with its burden. Auto-Owners then responded that its argument as to the exclusion was offered to show issues of material fact with Ridgewood Bay's motion for summary judgment and was not in support of Auto-Owners's cross-motion.

While the burden to prove a policy exclusion's applicability would typically fall to Auto-Owners as the insurer, we observe that within the summary-judgment framework, Ridgewood Bay, as the moving party, must satisfy the initial burden to show that there were no genuine issues of material fact as to the exclusion's applicability in order to prove it is entitled to coverage as a matter of law. The district court did not directly address this. However, our review of the record shows no genuine issue of material fact as to whether Ridgewood Bay was required to comply with the ordinances prior to the fire as the triggering event.

As previously noted, Ridgewood Bay's memorandum in support of its motion for summary judgment included Auto-Owners's own forensic engineer's report, which explains that county officials based the requirement to make the bathrooms ADA compliant on the scope of the repair work from the fire. Minnesota Department of Health inspection reports following the fire were also included, referencing orders from previous inspections issued in October 2013, December 2015, and January 2017 that do not include violations for the kitchen wall and floor surfaces, kitchen vent hood, or septic system. This supports

a conclusion that these items were not required to be brought up to compliance with the code at the time of the previous inspections. The district court found that "the covered event caused enforcement" of the ordinances and that "[b]efore the covered event, county or state officials had not identified code issues. Their inspections only occurred because of the covered event." We agree and therefore conclude that Ridgewood Bay's initial burden regarding coverage notwithstanding the exclusion was met.

As Ridgewood Bay met its initial burden, the burden then shifted to Auto-Owners as the nonmoving party to point to record evidence showing a genuine issue of material fact that the exclusion applied. The record shows that Auto-Owners did not point to any evidence showing that the code violations in question "required immediate compliance or retrofitting" prior to the covered event. Ridgewood Bay, as the moving party, met its initial burden, and Auto-Owners, as the nonmovant, did not produce any evidence that the preexisting-violation exclusion applied to defeat Ridgewood Bay's claim of coverage. Therefore, we conclude the district court correctly found that Auto-Owners did not meet its burden to prove that the preexisting-violation exclusion applied.

In sum, the district court correctly concluded that the use of the terms "demolition" and "requires" in the O&L endorsement are ambiguous, resulting in more than one reasonable interpretation of the provisions. Thus, the policy must be construed in favor of the insured, meaning Coverages A, B, and C apply to Ridgewood Bay's code-required upgrades. We are unable to conclude that, as a matter of law, Coverage A cannot apply to Ridgewood Bay's claims for code-required upgrades due to a lack of "loss in value" that falls under Coverage A. We further conclude that the burden properly rested with

Auto-Owners to show that the preexisting-violation exclusion applies, and the insurance company did not meet its burden. Therefore, the district court did not err in granting partial summary judgment to Ridgewood Bay.

II. The district court did not abuse its discretion in denying Ridgewood Bay's motion to amend its complaint to assert a claim of bad faith under Minn. Stat. § 604.18.

We review an order denying a motion to amend a complaint for abuse of discretion. *Bjerke v. Johnson*, 727 N.W.2d 183, 196 (Minn. App. 2007), *aff'd*, 742 N.W.2d 660 (Minn. 2007). "Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). "Whether the district court has abused its discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling." *Doe v. F.P.*, 667 N.W.2d 493, 500-01 (Minn. App. 2003) (citing *Fabio v. Bellomo*, 504 N.W.2d 758, 762 (Minn. 1993)), *rev. denied* (Minn. Oct. 21, 2003).

Ridgewood Bay moved the district court to amend its complaint to include a claim alleging Auto-Owners acted in bad faith in investigating Ridgewood Bay's business-personal-property losses. Minn. Stat. § 604.18, subd. 2(a), permits the court to award taxable costs to an insured against an insurer if the insured can establish (1) the absence of a reasonable basis for denying the benefits of the policy and (2) that the insurer knew of the lack of a reasonable basis for denying, or acted in reckless disregard of the lack of a reasonable basis for denying, the benefits of the policy. "[T]he proper inquiry under the first prong of the . . . standard is whether a reasonable insurer under the

circumstances would not have denied the insured the benefits of the insurance policy." *Peterson v. W. Nat'l Mut. Ins. Co.*, 946 N.W.2d 903, 910 (Minn. 2020). Relevant to the second prong is "the insurer's actual investigation and evaluation," which requires the insured to prove that the insurer either knew, or recklessly disregarded or remained indifferent to, information that would have allowed it to know that it lacked an objectively reasonable basis for denying the claim. *Id.* at 912.

The district court denied the motion, finding that Ridgewood Bay did not establish a prima facie case that Auto-Owners lacked a reasonable basis for denying the benefits of the policy. The court observed that while Auto-Owners had not yet provided Ridgewood Bay with all of its business-personal-property benefits, it had not outright denied the claim and had in fact made a partial payment against the claim. The district court additionally found that Ridgewood Bay did not establish a prima facie case that Auto-Owners did not complete or attempt to complete a reasonable investigation such that it should have known it lacked an objectively reasonable basis for denying the claim.

Ridgewood Bay first argues the district court improperly weighed evidence and made credibility determinations as to Auto-Owners's conduct and reasoning when all that was needed was for Ridgewood Bay to assert a prima facie case. Citing to *Swanlund v. Shimano Industrial Corp.*, Ridgewood Bay claims that the court should have considered only the allegations it asserted because Ridgewood Bay need only present evidence that, if unrebutted, would support judgment in its favor. 459 N.W.2d 151, 154 (Minn. App. 1990) (where this court considered only evidence presented by the appellant to establish that appellant met the prima-facie-evidence standard in a claim for punitive damages). The

district court stated, however, that "even if these allegations are unrebutted," Ridgewood Bay did not "establish[] a prima facie basis to amend their complaint."

We note that Minn. Stat. § 604.18, subd. 4(a), identifies evidence the court may consider in a claim for taxable costs, reading in part:

> The motion must allege the applicable legal basis under this section for awarding taxable costs under this section, and must be accompanied by one or more affidavits showing the factual basis for the motion. *The motion may be opposed by the submission of one or more affidavits showing there is no factual basis for the motion.* At the hearing, if the court finds prima facie evidence in support of the motion, the court may grant the moving party permission to amend the pleadings to claim taxable costs under this section.

(Emphasis added.)

Ridgewood Bay submitted with its motion an affidavit of its claims adjuster that provided a timeline of communications between the claims adjuster and Auto-Owners's claims handler and stated that Auto-Owners retained a mitigation company to inspect the damaged property. In opposing the motion, Auto-Owners submitted an affidavit of the claims handler indicating that Auto-Owners had a reasonable basis to question whether some of Ridgewood Bay's property claims qualified as a total loss based on smoke damage. In their affidavit, the claims handler further asserted that the investigation was delayed by nonresponsive third-party mitigation companies and that after Auto-Owners retained legal counsel, the claim-handling activities were reduced to monitoring the litigation. The statute requires the district court to review all of the parties' submissions to determine whether a factual basis for the motion exists. Minn. Stat. § 604.18, subd. 4(a).

Ridgewood Bay claims that Auto-Owners's submission does not establish a lack of factual basis for the motion as required by statute. We disagree. In finding no factual basis for the motion, the district court reviewed the affidavits and concluded that both parties contributed to delays in processing the claim, that Auto-Owners's rationale for investigating the claim prior to granting or denying it was objectively reasonable, and that Auto-Owners did not outright deny the benefits of the policy for Ridgewood Bay's business-personal-property claim. We conclude that the district court did not improperly weigh evidence when evaluating whether Ridgewood Bay established a prima facie case.

Finally, Ridgewood Bay argues that the district court should have concluded that Auto-Owners denied benefits to Ridgewood Bay without a reasonable basis due to Auto-Owners's failure to complete its investigation. Ridgewood Bay contends that Auto-Owners "chose to do nothing" and "abandoned its investigation" after failing several times to find a third-party evaluator to audit Ridgewood Bay's claim and that therefore Auto-Owners should have issued payment based on the amounts Ridgewood Bay's claims adjuster identified. We disagree. This reasoning requires that the district court accept Ridgewood Bay's conclusory allegations that Auto-Owners abandoned its investigation and indefinitely delayed any payments on the business-personal-property claim. To the contrary, the record reflects that the district court considered whether there was evidence that Auto-Owners had determined it would not complete the investigation or that additional payments would not be made. It concluded that Ridgewood Bay did not establish a prima facie case that the investigation was abandoned.

We discern no clear abuse of the district court's discretion and give deference to its decision. Therefore, we affirm the district court's decision to deny Ridgewood Bay's motion to amend.

III. The district court did not err in rejecting Ridgewood Bay's argument that the appraisal panel exceeded its authority.

Ridgewood Bay argues the district court erred in finding that the appraisal panel acted within its authority when it determined that no demolition costs were associated with the septic repairs. Ridgewood Bay asserts that the panel made an impermissible coverage decision in response to the request on the award form that they "state the cost to demolish and clear the site of undamaged parts of the building." We disagree and conclude that the district court did not err in finding that the appraisal panel acted within its authority.

"The scope of appraisal is limited to damage questions while liability questions are reserved for the courts." *Quade v. Secura Ins.*, 814 N.W.2d 703, 706 (Minn. 2012). Appraisers generally "have authority to decide the amount of loss but may not construe the policy or decide whether the insurer should pay." *Id.* (quotation omitted). But "'questions of law or fact, which are involved as mere incidents to a determination of the amount of loss or damage,' are appropriate to resolve in an appraisal in order to ascertain the 'amount of loss.'" *Cedar Bluff Townhome Condo. Ass'n v. Am. Fam. Mut. Ins. Co.*, 857 N.W.2d 290, 293 (Minn. 2014) (quoting *Quade*, 814 N.W.2d at 707).

Ridgewood Bay objected to the appraisal award and moved to remand the award to the panel for valuation of septic-system demolition, arguing that the panel acted beyond its authority by assigning no demolition costs to the septic system, thereby limiting the

coverage that applied to the septic system to the amount available pursuant to Coverage C. The district court found that the panel did not exceed its authority and denied Ridgewood Bay's motion. In so finding, the district court highlighted that the award form issued to the panel containing the instruction to "state the cost to demolish and clear the site of undamaged parts of the building" was proposed by Ridgewood Bay itself. We agree that this is significant. Since Ridgewood Bay proposed the language now at issue in the award form and consented to its being ordered for use by the panel in its valuation decisions, any error by the panel in excluding septic-system demolition costs was invited by Ridgewood Bay.

"[T]he doctrine of invited error . . . precludes a party from asserting error on appeal which he invited or could have prevented in the court below." *In re Hibbing Taconite Mine & Stockpile Progression*, 888 N.W.2d 336, 344 (Minn. App. 2016) (quotation omitted); *see Am. States Ins. Co. v. Ankrum*, 651 N.W.2d 513, 522-23 (Minn. App. 2002) (stating that a party who acquiesced in the submission of a question cannot argue on appeal that the district court erred by submitting the question). Here, each party submitted a proposed appraisal form to the district court, the parties discussed the competing forms with the court at an informal conference, final proposed forms were submitted, and the court issued an order electing to use Ridgewood Bay's proposed form. Throughout this process, Ridgewood Bay had ample opportunity to raise concerns about whether its own proposed language might lead the panel to analyze whether demolition associated with the septic system was for undamaged parts of the building, but it did not do so.

As this is an invited error, we need not reach the issue. Even so, a review of the question on the merits leads us to conclude that the appraisal panel did not exceed the scope of its authority by making a coverage determination. The appraisers were instructed by the court to use the form provided, and we observe that the appraisers were interpreting the form, not the insurance policy, to guide their decision. Since the form question at issue asks the panel to "state the cost to demolish and clear the undamaged parts of the building," we agree with the district court that the panel would necessarily have to make underlying inferences about what property was "part of the building," whether parts were damaged or undamaged, and whether those parts required demolition.

In support of its argument that the panel exceeded its authority, Ridgewood Bay points to affidavits submitted by the appraisers stating that they discussed whether the septic system was part of the building as a factor in their decision. However, whether there were demolition costs to part of the building associated with the septic system was precisely the question before them, so the panel must necessarily have considered whether the septic system was part of the building in order to value those costs. We conclude that, when asked to determine how much cost to assign for demolishing parts of the building required for septic repair, the panel's actions in addressing the question of whether the septic system was part of the building is not an interpretation of coverage, but rather just the sort of question of fact "involved as [a] mere incident[] to a determination of the amount of loss or damage" that is appropriate to "ascertain the amount of loss." *Cedar Bluff*, 857 N.W.2d at 293.

Therefore, we conclude that the district court did not err in determining that the panel acted within the scope of its authority.

IV. The district court erred by entering judgment on the appraisal award without including prejudgment interest.

Ridgewood Bay argues that the district court erred by failing to include prejudgment interest when it entered judgment. We agree.

The application of prejudgment interest is a matter of statutory interpretation that we review de novo. *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 139 (Minn. 2017). We first consider whether and how Ridgewood Bay raised the issue of prejudgment interest to the district court. Auto-Owners asserts that Ridgewood Bay did not bring a motion for prejudgment interest before the district court; instead, it opposed Auto-Owners's motion for entry of judgment and argued that it was entitled to prejudgment interest not included in the appraisal award. But Ridgewood Bay's initial complaint requests relief in the form of an award of its costs and disbursements, including prejudgment interest. And in its opposition to Auto-Owners's motion for entry of judgment, Ridgewood Bay requested an award of prejudgment interest. The district court, in its order granting Auto-Owners's motion, itemized amounts owed by Auto-Owners, but did not include prejudgment interest, and stated that "all other motions not expressly addressed are denied." Because prejudgment interest was the only issue before the court not expressly addressed in the district court's order, we conclude that the court denied Ridgewood Bay's request for prejudgment interest.

Next, we consider the arguments regarding whether Ridgewood Bay is entitled to prejudgment interest. Ridgewood Bay argues that it is entitled to prejudgment interest under either Minn. Stat. § 549.09, subd 1(b) (2020), or Minn. Stat. § 60A.0811, subd. 2 (2020). In response, Auto-Owners claims that Ridgewood Bay is not entitled to prejudgment interest because, first, the only applicable statute is Minn. Stat. § 60A.0811 (2020), and second, Auto-Owners did not breach its duty to make payments, and thus the interest requirement was not triggered.

Minn. Stat. § 549.09, subd. 1(a) (2020), provides that "when a judgment or award is for the recovery of money . . . interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator . . . and added to the judgment or award." In addition, Minn. Stat, § 549.09, subd. 1(b), states:

> Except *as otherwise provided by contract or allowed by law*, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) 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.

(Emphasis added.)

Alternatively, Minn. Stat. § 60A.0811, subd. 2(a), provides that an insured who "prevails in any claim against an insurer based on the insurer's breach or repudiation of, or failure to fulfill, a duty to provide services or make payments is entitled to recover ten percent per annum interest on monetary amounts due under the insurance policy." Subdivision 3 of Minnesota Statutes section 60A.0811 additionally states, "This section

applies to a court action or arbitration proceeding, including an action seeking declaratory judgment."

Auto-Owners first alleges that Ridgewood Bay is not entitled to prejudgment interest under Minn. Stat. § 549.09, subd. 1(b), because Ridgewood Bay's recovery of preaward interest is "otherwise . . . allowed by law," specifically, by Minn. Stat § 60A.0811. Our recent ruling on the interplay between Minn. Stat. § 549.09 and Minn. Stat. § 60A.0811 supports this conclusion.

In *K & R Landholdings, LLC v. Auto-Owners Insurance*, we held that insureds are entitled to preaward interest from appraisal proceedings under Minn. Stat. § 549.09 because appraisal proceedings do not determine liability and therefore are not "court actions," meaning preaward interest is not "otherwise allowed by law" under Minn. Stat. § 60A.0811 within the meaning of Minn. Stat. § 549.09, subd. 1(b). 907 N.W.2d 658, 664 (Minn. App. 2018).

Here, we are presented with the inverse situation, where Ridgewood Bay's award is a "court action" to which Minn. Stat § 60A.0811, subd. 3, likely applies. The facts and procedural posture here are distinguishable from those in *K & R Landholdings, LLC* because this litigation began as a breach-of-contract action, and the district court entered judgment based on the appraisal panel's award. As Ridgewood Bay states, "[t]he judgment entered here concluded a court action involving Auto-Owners's breach of its insurance policy, it did not confirm an appraisal award. Because Ridgewood Bay is seeking prejudgment interest on a court action, Minn. Stat. § 60A.0811, subd. 2(a), is the applicable statute."

The question then turns to whether interest is owed to Ridgewood Bay under Minn. Stat. § 60A.0811, subd. 2(a). Auto-Owners argues that it paid the appraisal award within the contractual timeframe and therefore did not breach its duty to make payments. However, the statute provides that

> [a]n insured who prevails in any claim against an insurer based on the insurer's breach or repudiation of, or failure to fulfill, a duty to provide services or make payments is entitled to recover . . . interest on monetary amounts due under the insurance policy, calculated from the date the request for payment of those benefits was made to the insurer.

Minn. Stat. § 60A.0811, subd. 2(a).

Ridgewood Bay is seeking interest on the judgment entered in its favor following a claim that Auto-Owners breached its contract by failing to provide coverage Ridgewood Bay was entitled to under its policy. Thus, the requirements of the statute are satisfied.

Auto-Owners argues it did not breach its "duty to make payments" because it paid the appraisal award less than 30 days after it was issued. It relies on the policy language, which reads:

> We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
> (1) We have reached agreement with you on the amount of loss; or (2) An appraisal award has been made.

If Minn. Stat. § 60A.0811, subd. 2(a), was intended to limit interest to the contractual deadline by which the insurer is to pay following the award of the amount due or the entry of judgment, it would not call for calculation of interest from the date the demand for payment of benefits was made. In addition, Minn. Stat. § 60A.0811 does not

include limiting language, such as "[e]xcept as *otherwise provided by contract* or allowed by law," as Minn. Stat § 549.09 does. Minn. Stat. § 549.09, subd 1(b) (emphasis added). Auto-Owners's interpretation of Minn. Stat. § 60A.0811, subd. 2(a), does not follow the plain language of the statute, and we are therefore unpersuaded. We reverse the district court on its denial of prejudgment interest to Ridgewood Bay and remand only for calculation of the appropriate amount of interest to be awarded.

Affirmed in part, reversed in part, and remanded.