STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1775

Meadows of Bloomfield Association,
Respondent,

vs.

State Farm Fire and Casualty Company,
Appellant.

Filed August 7, 2023
Affirmed
Bjorkman, Judge

Dakota County District Court
File No. 19HA-CV-21-187

Adina R. Bergstrom, Brock P. Alton, Sauro & Bergstrom, PLLC, Oakdale, Minnesota (for respondent)

Scott G. Williams, Haws-KM, P.A., St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant State Farm Fire and Casualty Company challenges summary judgment confirming an appraisal award in favor of respondent Meadows of Bloomfield Association relating to storm-damaged buildings. State Farm argues that (1) the appraisal panel improperly required it to pay to replace the shingles on all 37 townhomes even though the

shingles did not match before the storm and (2) the district court erred by directing entry of judgment before the shingles were replaced. We affirm.

FACTS

Meadows of Bloomfield manages 37 townhome buildings in Rosemount. In early August 2018, a wind and hailstorm damaged the soft metals on all 37 roofs. Repairing the metal portion of each roof required removal and replacement of some shingles.

At the time of the storm, State Farm insured Meadows under a businessowners' insurance policy that covers "direct physical loss" to covered property. The policy's Loss Payment clause describes how State Farm will meet its coverage obligations:

> e. Loss Payment
> In the event of loss covered by this policy:
> (1) At our option, we will either:
> (a) Pay the value of lost or damaged property;
> . . . .

The policy further provides that the value of covered property is determined based on replacement cost:

> We will determine e.(1)(a) in accordance with the applicable terms of Paragraph e.(4) below . . . .
> . . . .
> (4) . . . [W]e will determine the value of Covered Property as follows:
> (a) At replacement cost without deduction for depreciation, as of the time of loss, subject to the following:
> i. We will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:
> . . . .
> 2) The cost to replace, on the described premises, the lost or damaged property with other property

> of **comparable material, quality and used for the same purpose** . . . .

(Emphasis added.)

After receiving Meadows' storm claim, State Farm hired Donan Engineering to inspect the damage. Donan Engineering concluded that hail had damaged the soft metals on the roofs but did not damage the shingles. Donan's report also stated that some of the roofs had mismatched shingles, revealing a history of prior damage and repairs.

Because the parties were unable to agree on the amount of loss, Meadows demanded an appraisal, as required by the policy. The appraisal panel considered the parties' submissions and arguments and visited the site in October 2020. The appraisers inspected the roofs of a small number of buildings. On December 14, the appraisal panel issued its award. The appraisal panel determined that all 37 buildings sustained direct hail damage to the soft metals on the roofs in the amount of $753,289. The appraisal panel also determined that replacing the metal roof material required that a certain number of shingles be removed and replaced. But because the proposed replacement shingles were not a reasonable match for the existing shingles, the appraisal panel determined that all of the shingles needed to be replaced at a cost of $1,862,000.[1]

Meadows commenced this action, alleging breach of contract and requesting declaratory relief and damages. State Farm denied the allegations and moved to vacate the appraisal award. Meadows moved to confirm the award and for summary judgment. The

[1] In 2022, the appraisal panel confirmed its award and noted that seven of the buildings had prior roof repairs.

district court granted Meadows' motion. After the district court denied State Farm's request for leave to seek reconsideration, State Farm appealed.

Meadows subsequently moved the district court to recover attorney fees and costs. After reviewing the motion, the district court vacated the summary judgment. This court dismissed the appeal. The parties completed additional discovery regarding prior roof repairs and again submitted cross-motions for summary judgment. The district court again entered judgment in favor of Meadows based on the appraisal award. State Farm requested that the district court grant it leave to file a motion for reconsideration, arguing that the judgment improperly required it to pay replacement cost benefits before the work was completed. Meadows submitted a letter opposing the request and attached invoices documenting that the shingles had been replaced. The district court denied State Farm's request and directed entry of judgment, concluding that "[t]he scope of the repairs awarded by the Appraisal Report and confirmed by this Court have now been completed."

State Farm appeals.

DECISION

I. The appraisal panel's award is consistent with the insurance policy and law.

Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. On appeal from summary judgment, we review questions of law, including the interpretation of an insurance policy and its application to undisputed facts, de novo. *Com. Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

When interpreting an insurance policy, we construe the policy as a whole and give unambiguous language its plain and ordinary meaning. *Midwest Fam. Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013). We construe "any ambiguity regarding coverage . . . in favor of the insured." *Am. Fam. Ins. Co. v. Walser*, 628 N.W.2d 605, 609 (Minn. 2001). Neither party argues that the provision at issue here is ambiguous.

Generally, an appraisal panel has the "authority to decide the 'amount of loss' but may not construe the policy or decide whether the insurer should pay." *Quade v. Secura Ins.*, 814 N.W.2d 703, 706 (Minn. 2012). But in ascertaining the amount of loss, appraisers may resolve "questions of law or fact, which are involved as mere incidents to a determination of the amount of loss or damage." *Id.* at 707 (quotation omitted). We defer "to the appraisal panel's factual determination as to the amount of loss" because of Minnesota's public policy favoring appraisals. *Cedar Bluff Townhome Condo. Ass'n, Inc. v. Am. Fam. Mut. Ins. Co.*, 857 N.W.2d 290, 296 (Minn. 2014).

State Farm does not dispute that the 2018 storm caused a covered loss that required replacement of the soft metal portions of all 37 roofs. And State Farm does not dispute that a certain number of shingles must be removed to accommodate that work and that the available replacement shingles do not match the existing shingles. But State Farm contends that the appraisal panel erred by awarding $1,862,000 because the insurance policy does not require it to provide a reasonable match for shingles when, at the time of the loss, the shingles did not match.

The question of an insurer's obligation to ensure that covered property "match" following repair or replacement is not a new one. In *Cedar Bluff*, a hailstorm damaged all

of the roofs and at least one panel of siding on each of 20 buildings. 857 N.W.2d at 291. The color of the 11-year-old siding had faded, and replacement panels were not available in the same color. An appraisal panel awarded the cost of replacing all of the siding. As in this case, the insurance policy provided coverage for the cost of replacing "damaged property with other property . . . [o]f comparable material and quality." *Id.* (alteration in original). Our supreme court interpreted the phrase "comparable material and quality" to mean "a reasonable color match between new and existing siding when replacing damaged siding." *Id.* at 294. And the supreme court concluded that the appraisal panel applied the correct legal standard when it determined that there was no reasonable match available for the existing siding and awarded the cost of replacing all of the siding. *Id.* at 295.

This court answered the question differently based on distinct policy language in *Pleasure Creek Townhomes Homeowners' Ass'n v. Am. Fam. Ins. Co.*, No. A19-0662, 2019 WL 6284263 (Minn. App. Nov. 25, 2019), *rev. denied* (Minn. Feb. 18, 2020).[2] In *Pleasure Creek*, a 2017 hailstorm damaged siding on 14 covered buildings. 2019 WL 6284263, at *1. An appraisal panel determined that the replacement siding did not reasonably match the existing siding, so it awarded the cost of replacing all of the siding. *Id.* at *2. American Family declined to pay the cost to replace siding that was not hail damaged based on its matching exclusion. The exclusion provided, in relevant part, that "[w]e will not pay to repair or replace undamaged material due to mismatch between

[2] While *Pleasure Creek* is a nonprecedential decision, it is highly persuasive because it is a recent case and involves similar facts. Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating "nonprecedential opinions may be cited as persuasive authority").

undamaged material and new material used to repair or replace damaged material." This court concluded that the exclusion was enforceable. *Id.* at *5.

State Farm concedes that its policy does not contain a matching exclusion but contends that *Cedar Bluff* is inapposite because the item to be matched—shingles—was not uniform in appearance at the time of the loss. This argument is unavailing. *Cedar Bluff* did not focus its analysis on the condition of the siding prior to the storm. Rather, the supreme court interpreted "comparable material and quality" to include matching siding and deferred to the appraisal panel's conclusion that no reasonable siding match was available. *Cedar Bluff*, 857 N.W.2d at 294-95. This makes sense because replacement-cost coverage is not tied to the condition of the covered property at the time of the loss.

State Farm's reliance on *Elm Creek Courthome Ass'n, Inc. v. State Farm Fire & Cas. Co.*, 971 N.W.2d 731 (Minn. App. 2022), *rev. denied* (Minn. May 17, 2022), is no more persuasive.[3] In *Elm Creek*, a hailstorm damaged the siding on 14 buildings. An appraisal panel awarded the cost of replacing all of the siding on four buildings because of matching. 971 N.W.2d at 735. And the appraisal panel determined that undamaged siding from those buildings should be "harvested" to replace damaged siding on the ten other buildings. *Id.* Elm Creek objected, contending the use of "harvested" siding is prohibited

[3] State Farm also directs this court to nonbinding caselaw from other jurisdictions, including *Villas at Winding Ridge v. State Farm Fire & Cas. Co.*, 942 F.3d 824, 828 (7th Cir. 2019). But in *Villas at Winding Ridge*, the appraisal panel awarded an allowance for shingle repairs on only 13 out of 33 buildings. *Villas at Winding Ridge*, 942 F.3d at 832. The Seventh Circuit distinguished *Cedar Bluff* from *Villas at Winding Ridge* because in *Cedar Bluff* the appraisal panel issued an award for the total replacement of all siding. *Id.* at 832-33. *Villas at Winding Ridge* is similarly distinguishable from this case.

by the loss payment provision of the insurance policy that provides loss will be calculated "without deduction for depreciation." *Id.* at 737. We concluded that the policy did not prohibit harvesting because the plain meaning of "without deduction for depreciation" does not relate to a method of repair; it provides "a method of accounting that disclaims subtracting the property's inherent loss of value over time from the amount to be paid as the [replacement cost value] of the property." *Id.*

Finally, State Farm contends that the appraisal award provides Meadows a windfall—a substantially better roof than existed before the storm—because Meadows previously replaced shingles "with no concern for whether or not the replacement shingles 'matched' the originals."[4] But that is an inherent feature of replacement-cost coverage, distinguishing it from actual-cash-value coverage. *Brooks Realty, Inc. v. Aetna Ins. Co.*, 149 N.W.2d 494, 501 (Minn. 1967) (applying broad-evidence rule in calculating actual cash value, including actual value of building at the time of loss); *see Wilcox v. State Farm Fire & Cas. Co.*, 874 N.W.2d 780, 785 (Minn. 2016) (noting that embedded-labor-cost depreciation may be considered under broad-evidence rule). State Farm could have but did not exclude coverage for undamaged portions of covered property due to mismatch with damaged portions replaced with new material. On this record, we conclude that the appraisal panel applied the correct legal standard when it determined that "the proposed

[4] State Farm also asserts that the appraisal panel did not have sufficient evidence as to the number of buildings that had prior shingle/roof repairs. But the insurance policy requires State Farm to pay replacement-cost value regardless of the shingles' prior condition. Because there is no dispute that repairing the soft metals required removal and replacement of shingles on every roof and the replacement shingles did not match any of the existing shingles, any questions regarding the extent of prior shingle damage are irrelevant.

matching shingles observed at the inspection . . . [did not] represent[] a reasonable match," and the district court did not err by "giv[ing] deference to the appraisal panel's factual determination as to the amount of loss." *Cedar Bluff*, 857 N.W.2d at 296.

II. The district court did not err by entering judgment before the shingles were replaced.

Summary judgment was entered on October 17, 2022. The judgment directed State Farm to "pay the remaining appraisal award for Replacement Cost Value benefits under the policy as the buildings are repaired pursuant to the language in the insurance contract." On November 2, State Farm requested leave to file a motion to reconsider, asserting that the judgment required it to pay replacement cost benefits before the shingle-replacement work had been completed.[5] On November 7, Meadows submitted a letter opposing reconsideration. The letter attached invoices (from June 1, 2022, through August 18, 2022) documenting that the shingles had been replaced. The district court denied State Farm's request, concluding that "[t]he scope of the repairs awarded by the Appraisal Report and confirmed by this Court have now been completed."

State Farm argues that the district court erred by considering the invoices in connection with its reconsideration request, citing *State v. Allwine*, 963 N.W.2d 178, 191 (Minn. 2021). We are not persuaded. In *Allwine*, the criminal defendant moved the district court to reconsider its denial of postconviction relief and submitted new evidence in the form of affidavits. 963 N.W.2d at 185. The supreme court concluded that the district court

[5] "Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances." Minn. R. Gen. Prac. 115.11.

did not abuse its discretion in denying reconsideration, quoting the 1997 advisory committee comment to Minn. R. Gen. Prac. 115.11, which states that "[m]otions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered." *Id.* at 190; *see also Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712, 716 (Minn. App. 1997) (concluding that evidence known at the time of the summary-judgment motion should have been produced at that time), *rev. denied* (Minn. Apr. 24, 1997).

While we agree that a party may not use the occasion of a reconsideration motion to present evidence that was available at the time of the prior motion, that is not what happened here. Unlike the affidavits the defendant submitted in *Allwine*, the invoices are not evidence that Meadows could have presented with the summary-judgment motions. The last invoice (which documents completion of the work) is dated August 18, 2022—almost two months after the summary-judgment hearing. Moreover, the invoices are not relevant to the issues disputed on summary judgment. They are simply proof that a condition imposed by the court, that the shingles be replaced before payment, had been met. *See* 3A Jevon D. Bindman, et al., *Minnesota Practice* § 115.11 (2023 ed.) ("Material submitted with the motion may be germane to any possible review of the question of whether modification, if granted, was appropriate; it will not be considered to determine if the question was correctly decided initially."). State Farm does not cite a case that prohibits the district court from considering such evidence.

Finally, State Farm contends that it was not given the chance to determine what Meadows paid to replace the shingles. This argument is unavailing. The appraisal panel

was charged with determining the amount of loss through a process in which State Farm participated. *See Quade*, 814 N.W.2d at 706 (stating "appraisers have authority to decide the amount of loss" (quotation omitted)). The district court did not err by confirming the appraisal panel's award. And the record establishes the work was completed and payment was due at the time judgment was entered.

Affirmed.