STATE OF MINNESOTA

IN SUPREME COURT

A18-0367

Court of Appeals — Anderson, J.

Sheila Oliver, et al.,

Respondents,

vs.

State Farm Fire and Casualty Insurance Company,

Appellant.

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S Y L L A B U S

Because the Minnesota Uniform Arbitration Act, Minn. Stat. §§ 572B.01–.31 (2018), does not apply to fire insurance appraisal awards under the Minnesota standard fire insurance policy, Minn. Stat. § 65A.01 (2018), the district court erred by holding that a motion for preaward interest on a fire insurance appraisal award was time-barred by the Act.

Affirmed.

O P I N I O N

ANDERSON, Justice.

A fire occurred at the home of respondents Sheila and William Oliver in Edina. The Oliver home was insured against fire loss by appellant State Farm Fire and Casualty Insurance Company (State Farm). Oliver and State Farm were unable to agree on the amount of the loss, so Oliver requested an appraisal. An appraisal panel issued an award and State Farm paid the appraisal award. Oliver then sought confirmation of the appraisal award under the Minnesota Uniform Arbitration Act, Minn. Stat. §§ 572B.01–.31 (2018), from the district court. Oliver also moved the court to grant preaward interest on the appraisal award. The court granted the motion to confirm the appraisal award but denied the motion for preaward interest as untimely. The court of appeals reversed and remanded. Because we hold that the district court erred by applying the Minnesota Uniform Arbitration Act to a fire loss appraisal award, we affirm the court of appeals, though on different grounds, and remand to the district court for reconsideration based on our holding.

FACTS

In May 2015, the Oliver home was significantly damaged in a fire. Oliver reported the fire loss to the insurer of the home, State Farm. Because Oliver and State Farm were unable to agree on the amount of the loss, Oliver requested an appraisal under the provisions of the fire insurance policy. In March 2016, the appraisal panel issued its award, which State Farm paid. Oliver had not sought, nor did the appraisal panel award, any preaward interest as part of the appraisal award. Over a year later, Oliver sent a letter to

State Farm demanding that State Farm pay $94,009.18 in preaward interest, which State Farm declined to pay.

In October 2017, Oliver moved the district court to confirm the award under the Minnesota Uniform Arbitration Act. As a part of the confirmation, Oliver also sought preaward interest on the appraisal award. State Farm opposed the motion for preaward interest, arguing inter alia that the motion was untimely under Minn. Stat. § 572B.24(a) because it was made outside the 90-day period to modify an arbitration award under the Minnesota Uniform Arbitration Act. Oliver argued that section 572B.24(a) did not apply because the request for preaward interest was not a modification of the award of the appraisal panel.

The district court ruled that the motion for preaward interest was untimely under section 572B.24(a) because it concluded that the motion was one to modify an arbitration award and was thus outside the 90-day limitation period in the statute. Oliver appealed the denial of preaward interest. The court of appeals reversed, holding that although appraisal awards are subject to the Minnesota Uniform Arbitration Act, the 90-day limitation period for motions to modify an arbitration award does not apply to motions for preaward interest on appraisal awards. *Oliver v. State Farm Fire & Cas. Ins. Co.*, 923 N.W.2d 680, 688 (Minn. App. 2019). In addition, the court of appeals held that appraisal panels lack authority to grant preaward interest. *Id.* at 686–87. Thus, the court of appeals remanded to the district court for reconsideration. *Id*. at 688.

State Farm sought review of two questions: (1) whether Minn. Stat. § 572B.24(a), the provision limiting modification of awards to 90 days after receiving notice of an

arbitrator's award, applies to an insured's right to obtain preaward interest; and (2) whether an appraisal panel has authority to issue preaward interest.

We granted review.

ANALYSIS

Oliver's fire loss was covered by a homeowner's insurance policy issued by State Farm, which adhered to the Minnesota Standard Fire Insurance Policy. *See* Minn. Stat. § 65A.01 (2018) (prescribing the minimum level of coverage for fire insurance policies issued in Minnesota). Oliver sought preaward interest on the fire loss award based on our decision in *Poehler v. Cincinnati Insurance Company*, 899 N.W.2d 135 (Minn. 2017). In *Poehler*, we held that, under Minn. Stat. § 549.09, subd. 1(b) (2018), "absent contractual language explicitly precluding preaward interest, an insured may recover preaward interest on an appraisal award for a fire insurance loss." *Poehler*, 899 N.W.2d at 142. Oliver moved the district court to confirm the award and grant preaward interest using the procedures contained in the Minnesota Uniform Arbitration Act. *See* Minn. Stat. § 572B.22. Given that Oliver proceeded under the Act to confirm the award and seek preaward interest, the issue, raised by State Farm, is whether the Act's 90-day period for modifying awards applies.

Inherent in the parties' positions is the underlying assumption that the Minnesota Uniform Arbitration Act applies to appraisals. The Minnesota Standard Fire Insurance Policy, which applied to Oliver's policy with State Farm, provides an appraisal process for

resolving disputes over the amount of fire loss.[1] *See* Minn. Stat. § 65A.01. The Minnesota Uniform Arbitration Act applies to "agreements to arbitrate." Minn. Stat. § 572B.03 (2018). The Minnesota Standard Fire Insurance Policy does not use the term "arbitrate" or its derivatives. But based on precedent from the court of appeals' holding that the Act applies to appraisals, Oliver proceeded under the Minnesota Uniform Arbitration Act to seek preaward interest on the appraisal award. *See QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. App. 2010) ("Appraisal decisions are subject to . . . the arbitration statute."). The court of appeals also relied on this authority in its decision, stating that "appraisal decisions are subject to the [Minnesota Uniform Arbitration Act]." *Oliver*, 923 N.W.2d at 687 (citing *QBE Ins. Corp.*, 778 N.W.2d at 398). Thus, as a predicate matter, before we can decide whether a request for preaward interest is a modification of an award and subject to a 90-day limitation for modifications, we must first decide whether an appraisal is governed by the Minnesota

[1] Insurers providing fire insurance policies in Minnesota must provide a minimum level of coverage and include required provisions. *See* Minn. Stat. § 65A.01. The Minnesota Standard Fire Insurance Policy provides an appraisal process as a way to resolve disputes between an insured and an insurer regarding the amount of the loss from a fire. *See id.*, subd. 3. When a disagreement over the amount of the loss occurs, each party appoints an appraiser. *See id.* The appraisers then select a neutral umpire, who resolves any differences between the two appraisers. *See id.* The two appraisers and umpire together comprise an appraisal panel. *See id.* The written appraisal award determines "the amount of actual value and loss." *Id.*

Uniform Arbitration Act.[2] Although the court of appeals has opined on this issue, we have not, and thus this is a matter of first impression for us.

The Minnesota Uniform Arbitration Act defines the scope of its application by stating that the Act "govern[s] agreements to arbitrate." Minn. Stat. § 572B.03. The Act does not define what constitutes an agreement to arbitrate nor what constitutes arbitration, and does not use the word "appraisal" or its derivatives. *See* Minn. Stat. §§ 572B.01–.31. Thus, to determine whether the Act applies to appraisals, we must first decide whether governing "agreements to arbitrate" also means the Act governs appraisals. This determination requires us to interpret the Minnesota Uniform Arbitration Act.

"We review questions of statutory interpretation de novo." *Sumner v. Jim Lupient Infiniti*, 865 N.W.2d 706, 708 (Minn. 2015). The purpose of all statutory interpretation is "to ascertain and effectuate the intent of the Legislature." *Hous. & Redevelopment Auth. of Duluth v. Lee*, 852 N.W.2d 683, 687 (Minn. 2014); *see also* Minn. Stat. § 645.16 (2018). When interpreting the Minnesota Uniform Arbitration Act, "we will consider other jurisdictions' interpretations of their uniform arbitration acts." *City of Rochester v. Kottschade*, 896 N.W.2d 541, 546 (Minn. 2017).

The parties and the court of appeals rely on court of appeals' decisions holding that an appraisal is subject to the Minnesota Uniform Arbitration Act. This precedent

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[2] This issue was raised at oral argument. Following oral argument, the parties were asked to provide supplemental briefing on whether the Minnesota Uniform Arbitration Act, Minn. Stat. §§ 572B.01–.31, applies to fire insurance appraisals, in light of the appraisal policy provisions under the Minnesota Standard Fire Insurance Policy, Minn. Stat. § 65A.01, subd. 3.

originated in the court of appeals' decision in *David A. Brooks Enterprises, Inc. v. First Systems Agencies*, 370 N.W.2d 434, 435 (Minn. App. 1985). In *David A. Brooks*, the conclusion "that the arbitration statute . . . governs the decision of the appraisers" was without any substantive analysis by the court. *Id.* Rather, the court merely stated that it "believe[s] that the arbitration statute, Minn. Stat. § 572.01–572.30 (1980), governs the decision of the appraisers, and therefore, the appraisers had the authority to award prejudgment interest." *Id.* But even in light of *David A. Brooks* and its progeny, the court of appeals has not been consistent in this conclusion. *See, e.g.*, *Johnson v. Mut. Serv. Cas. Ins. Co.*, 732 N.W.2d 340, 346 (Minn. App. 2007) (concluding that "the statutorily required appraisal provision is *not an agreement to arbitrate* governed by the [Minnesota] Uniform Arbitration Act" (emphasis added)).

Even though we have not decided the issue before us, our decisions have recognized a distinction between arbitration and appraisal.[3] For example, we have held that the scope of judicial review of an arbitration panel's decisions and an appraisal panel's decisions are fundamentally different. Arbitration panels "are the final judges of both law and fact." *Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988). "[E]very

[3] Admittedly, our decisions at times have used the terms "arbitration" and "appraisal" interchangeably. *See, e.g.*, *Boston Ins. Co. v. A.H. Jacobson Co.*, 33 N.W.2d 602, 604 (Minn. 1948) (stating that the "[f]ailure or inability of the parties to agree as to the amount of the loss conditions the right to an appraisement or arbitration"); *Kavli v. Eagle Star Ins. Co.*, 288 N.W. 723, 725–27 (Minn. 1939) (upholding the district court's authority to appoint an umpire and, referring to the appraisal process, stating that "[t]he purpose of arbitration is to provide a plain, speedy, inexpensive and just determination of the extent of the loss"). This past usage does not undermine the fundamental differences we have recognized between an appraisal and an arbitration as discussed in this opinion.

reasonable presumption is to be exercised in favor of the finality and validity of the arbitration award, thus the scope of judicial review of an arbitration award is extremely narrow." *Peggy Rose Revocable Tr. v. Eppich*, 640 N.W.2d 601, 606 (Minn. 2002). This contrasts with our view that the authority of an appraisal panel is more limited in that "appraisers have 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) (internal quotation marks omitted) (citing 15 Lee R. Russ & Thomas F. Segalla, *Couch on Insurance* § 213:44 (3d ed. 1999) ("An appraiser can make no legal determinations.")).

The dictionary definitions of the terms "arbitration" and "appraisal" also illustrate their differences. The term "arbitration" generally means "[a] dispute-resolution process in which the disputing parties choose one or more neutral third parties to make a final and binding decision resolving the dispute." *Arbitration*, *Black's Law Dictionary* (11th ed. 2019). By contrast, "appraisal" is generally understood as "[t]he determination of what constitutes a fair price for something or how its condition can be fairly stated; the act of assessing the worth, value, or condition of something." *Appraisal*, *Black's Law Dictionary* (11th ed. 2019). These definitions are consistent with our decisions that distinguish between appraisal and arbitration.

In addition, although not binding on us, we look to other states that have adopted a form of the Uniform Arbitration Code and have ruled on issues similar to those presented here. *See* Minn. Stat. § 572B.29(a) (stating that in "applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect

to its subject matter among states that enact it"). The Florida Supreme Court has held that an appraisal clause is not an agreement to arbitrate and that the "formal procedures of the Arbitration Code" do not apply. *Allstate Ins. Co. v. Suarez*, 833 So. 2d 762, 766 (Fla. 2002). Other courts have also held that the Uniform Arbitration Act does not apply to appraisals. *See Minot Town & Country v. Fireman's Fund Ins. Co.*, 587 N.W.2d 189, 191 (N.D. 1998) (distinguishing between appraisal and arbitration and denying the vacation of the appraisal award under the North Dakota Uniform Arbitration Act because the Act does not apply to appraisals); *see also Elberon Bathing Co. v. Ambassador Ins. Co.*, 389 A.2d 439, 446–47 (N.J. 1978) (holding that the Arbitration Act is not applicable to appraisals).

Courts that have treated an appraisal clause as an agreement to arbitrate have done so under statutes that are distinguishable from ours. *See, e.g., Louise Gardens of Encino Homeowners' Ass'n v. Truck Ins. Exch., Inc.*, 98 Cal. Rptr. 2d 378, 385 (Cal. Ct. App. 2000) (holding that because the California arbitration statute specifically defines the term "agreement" to include appraisals, "an agreement to conduct an appraisal contained in a policy of insurance . . . is considered to be an arbitration agreement subject to the statutory contractual arbitration law"); *Silverman v. Fireman's Fund Am. Ins. Cos.*, 604 P.2d 805, 806 (Nev. 1980) (concluding that appraisals fall within arbitration because the arbitration statute "specifically includes appraisals within the arbitration law").

Based on our analysis, our interpretation of the Minnesota Uniform Arbitration Act, and our precedent limiting the authority of appraisal panels and distinguishing arbitration from appraisal, we hold that the appraisal process under the Minnesota Standard Fire Insurance Policy is not an "agreement to arbitrate" under section 572B.03 of the Minnesota

Uniform Arbitration Act. Therefore, because a fire insurance appraisal award does not fall within the scope of the Act, the Act's 90-day limitation to modify an award does not apply to an appraisal award.[4] The district court thus erred by denying preaward interest to Oliver based on the 90-day limitation provision in the Act.[5]

We therefore affirm the court of appeals' decision, including its decision to remand to the district court, but we do so on different grounds. We hold that the Minnesota Uniform Arbitration Act, Minn. Stat. §§ 572B.01–.31, does not apply to the appraisal process under the Minnesota Standard Fire Insurance Policy, Minn. Stat. § 65A.01.[6] Based

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[4] The fire insurance statute requiring appraisals has been in effect in similar form since 1895. Thus, the Legislature has had ample opportunity to enact legislation to apply the Minnesota Uniform Arbitration Act to appraisals, but has never done so. If the Legislature wants to extend the Minnesota Uniform Arbitration Act, or portions of the Act such as the confirmation process, to appraisals, it has the authority to do so.

[5] We do not reach the issue of what time limitation, if any, applies because that issue was not before the court of appeals and is not before us.

State Farm also raised the issue of whether appraisal panels have authority to grant preaward interest, to support its argument that the 90-day limitation for modifications under the Act applied. Because we hold that the Act, and thus the modification statute and its 90-day limitation, does not apply, we need not reach this issue.

[6] We requested supplemental briefing addressing what remedy is available to a policyholder seeking to claim preaward interest on an appraisal award if the Minnesota Uniform Arbitration Act does not apply to an appraisal award. Both parties argue that the Minnesota Uniform Declaratory Judgments Act, Minn. Stat. §§ 555.01–.16 (2018), is an appropriate vehicle for asserting a claim for preaward appraisal interest, and we agree. The parties did not brief, and we do not consider here, the possibility of other remedies, including a civil contract action or other civil action.

on this holding, a remand is necessary to allow the district court to determine whether Oliver is owed preaward interest and if so the amount of interest that Oliver is owed.[7]

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

[7] Because Oliver proceeded under published court of appeals precedent that endorsed the use of the Minnesota Uniform Arbitration Act to confirm appraisal awards, the district court should allow Oliver to amend the pleadings to assert the appropriate cause of action relating back to the original commencement of the district court proceedings.