STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0631

Depositors Insurance Company,
Appellant,

vs.

Craig Dollansky,
Respondent,

Julie Dollansky,
Defendant.

Filed December 11, 2017
Affirmed
Schellhas, Judge

Sherburne County District Court
File No. 71-CV-16-213

Michelle D. Hurley, Yost & Baill, LLP, Minneapolis, Minnesota (for appellant)

Mark K. Hellie, Beth K. Bussian, Regional Legal Staff Counsel, Eden Prairie, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Schellhas, Judge.

S Y L L A B U S

Minnesota Statutes section 60A.41(a) (2016), prohibits an insurer from subrogating against its own insured for the same loss even when the insured is not a named insured in the policy.

O P I N I O N

SCHELLHAS, Judge

Appellant argues that the district court erred by granting summary judgment to respondent, arguing that Minnesota Statutes section 60A.41(a) does not bar its subrogation action because respondent is not an insured under appellant's policy. We affirm.

FACTS

In December 2013, respondent Craig Dollansky rented a motor home from Karavan Trailers. The rental contract provided as follows:

> **INSURANCE:** Renter is responsible for all damage or loss, including damage or loss you cause to others. Renter has provided us with an insurance binder indicating that Renter has Vehicle liability, collision, and comprehensive insurance covering Renter, [Karavan] and Vehicle.
>
> **RENTAL, INDEMNITY, AND WARRANTIES:** . . . Renter agrees to indemnify [Karavan], defend [Karavan], and hold [Karavan] harmless from all claims, liability, cost and attorney fees incurred by [Karavan] resulting from, or arising out of, this rental and Renter's use of the vehicle.
>
> **RESPONSBILITY FOR DAMAGE:** Renter is responsible for all damage to the Vehicle . . . regardless of whether or not Renter is at fault.

In January 2014, Dollansky was driving the motor home when it caught fire, causing damage to the motor home in the amount of $204,895.05. The cause of the fire is unknown.

Appellant Depositors Insurance Company insured Karavan at the time of the fire; American Family Insurance was Dollansky's automobile insurer. Karavan submitted a claim for the entire amount of the fire damage to American Family, who paid Karavan part of its insurance deductible but denied the balance of the claim. Depositors then paid

Karavan $204,895.05 and brought this action against Dollansky for breach of the rental contract, as the subrogee of Karavan.

Depositors and Dollansky filed cross-motions for summary judgment. The district court granted summary judgment in favor of Dollansky, concluding that he was an "insured" under Depositors' policy and that Minnesota Statutes section 60A.41(a) therefore prohibits Depositors from proceeding in a subrogation action against him.

This appeal follows.

ISSUE

Did the district court err by granting summary judgment in favor of Dollansky on the basis that Depositors' suit was prohibited under Minn. Stat. § 60A.41(a) because Dollansky is an insured under Depositors' insurance policy?

ANALYSIS

"A district court may grant summary judgment when 'there is no genuine issue as to any material fact' and one party 'is entitled to a judgment as a matter of law.'" *Kelly v. Kraemer Constr., Inc.*, 896 N.W.2d 504, 508 (Minn. 2017) (quoting Minn. R. Civ. P. 56.03). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp.*, 751 N.W.2d 558, 564 (Minn. 2008). Appellate courts review de novo whether any genuine issues of material fact exist and "whether the district court erred in its application of the law to the facts." *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). Appellate courts view the evidence in the light most favorable to the party against whom summary judgment was granted. *Id.*

"Subrogation is the substitution of another person in place of the creditor to whose rights he or she succeeds in relation to the debt, and gives to the substitute all the rights, priorities, remedies, liens, and securities of the person for whom he or she is substituted." *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 5 (Minn. 2012) (quotation omitted). Subrogation in the insurance context "involves the substitution of an insurer (subrogee) to the rights of the insured (subrogor)." *Medica, Inc. v. Atl. Mut. Ins. Co.*, 566 N.W.2d 74, 76 (Minn. 1997). "*Upon payment of a loss,* the insurer is subrogated in *a corresponding amount* to the insured's right of action against any third party whose wrongful conduct caused the loss." *RAM*, 820 N.W.2d at 5–6 (emphasis added).

Depositors argues that the district court erred by concluding Minnesota Statutes section 60A.41(a) bars its suit. This argument requires us to interpret section 60A.41, as well as the insurance policy issued by Depositors. "The goal of statutory interpretation is to effectuate the intent of the Legislature." *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716 (Minn. 2014). When interpreting a statute, we "read and construe the statute as a whole, giving effect wherever possible to all of its provisions, and interpreting each section in light of the surrounding sections to avoid conflicting interpretations." *Eclipse Architectural Grp. v. Lam*, 814 N.W.2d 692, 701 (Minn. 2012) (quotation omitted). "Where the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). Similarly, we must read an insurance policy as a whole, reading provisions in context with all other relevant

provisions and giving unambiguous language its plain and ordinary meaning. *Commerce Bank*, 870 N.W.2d at 773.

Under Minnesota law, an insurance company is prohibited from subrogating against its insured. Minn. Stat. § 60A.41(a). Specifically, the statute provides:

> (a) An insurance company providing insurance coverage or its reinsurer for that underlying insurance coverage may not proceed against its insured in a subrogation action where the loss was caused by the nonintentional acts of the insured.

Id.

Depositors argues that in determining that its suit is barred by section 60A.41(a), the district court erred "in finding that the 'controlling contract' was Depositors' contract" because "the correct contract to examine would have been Dollansky's policy with American Family." But the plain language of Minn. Stat. § 60A.41(a) provides that "[a]n insurance company *providing insurance coverage* . . . may not proceed against its insured in a subrogation action." Minn. Stat. § 60A.41(a) (emphasis added). Here, Depositors is the "insurance company providing insurance coverage." The district court therefore properly concluded that Depositors' insurance policy is the "controlling contract" under section 60A.41(a).

Depositors argues that regardless of whether its policy with Karavan is the "controlling contract," Dollansky is not an "insured" under Minn. Stat. § 60A.41(a) because the "'insured' referenced in the statute is the named insured," and Dollansky is not a named insured, "i.e., the person purchasing the policy." To support its argument that

section 60A.41(a) refers to the "named insured," Depositors points to section 60A.41(b), which provides:

> (b) An insurance company providing insurance coverage or its reinsurer for that underlying insurance coverage may not subrogate itself to the rights of its insured to proceed against another person if that other person is insured for the same loss, by the same company. This provision applies only if the loss was caused by the nonintentional acts of the person against whom subrogation is sought.

Minn. Stat. § 60A.41(b) (2016).

Depositors contends that section 60A.41(b) "distinguishe[s] between claims against the subrogating insurance company's own named insured and claims against another party who happened to be insured by the subrogating insurance company." Depositors argues that because section 60A.41(b) contains the term "another person," rather than "insured," the legislature intended to distinguish between individuals who purchased a policy from the insurer and "someone who might be considered an insured under the language of the insurance contract." We disagree.

Under settled law, this court cannot add to a statute words that were intentionally or inadvertently omitted by the legislature. *Rohmiller v. Hart*, 811 N.W.2d 585, 590–91 (Minn. 2012). Our review of section 60A.41(a) and (b), demonstrates that nowhere does the statute refer to a "named insured." Rather, the plain language of Minn. Stat. § 60A.41(a) provides that an insurance company "may not proceed against its *insured* in a subrogation action." (Emphasis added.) Although section 60A.41(b) differentiates between an "insured" and "another person" who is "insured for the same loss," this court in *Ill. Farmers Ins. Co. v. Schmuckler*, explained that the statutory purpose for this distinction is to avoid

potential conflict-of-interest problems. 603 N.W.2d 138, 142 (Minn. App. 1999), *review denied* (Minn. Feb. 24, 2000).

In *Schmuckler*, a driver negligently backed her car into a townhouse that Schmuckler rented, causing Schmuckler damages. *Id.* at 139. Schmuckler had a renter's insurance policy, and the driver had an automobile liability insurance policy, with Illinois Farmers Insurance Company. *Id.* Illinois Farmers paid Schmuckler $31,889.99 for losses under her renter's insurance policy. Schmuckler then sued the driver for negligence and obtained a jury verdict of $32,455. Illinois Farmers unsuccessfully attempted to offset its payment of $31,889.99 from the verdict as a collateral source, and this court affirmed the district court's decision denying the deduction. *Id.* at 140. Illinois Farmers then commenced a declaratory-judgment action against Schmuckler. *Id.*

In the declaratory-judgment action, the district court rejected Schmuckler's argument that "th[e] action was precluded by Minn. Stat. § 60A.41 (1998), which prohibits subrogation actions against insureds." *Id.* And the court concluded that Illinois Farmers could recover the amount it had paid to Schmuckler under the doctrine of equitable subrogation. *Id.* Schmuckler appealed, and this court reversed. *Id.* at 140, 142. On appeal, "the parties agree[d] that [subsection 60A.41(b)] prohibited Illinois Farmers from subrogating to Schmuckler's rights against [the driver] and from proceeding in Schmuckler's name against [the driver] in the underlying tort action." *Id.* at 141. Illinois Farmers nevertheless argued that it could require Schmuckler to hold her jury-verdict proceeds in trust to reimburse Illinois Farmers for the amounts it paid under her renter's insurance policy. *Id.*

This court rejected Illinois Farmer's argument, stating that "[section 60A.41(b)] . . . specifically prohibits an insurance company from subrogating 'itself to the rights of its insured to proceed against another person if that other person is insured for the same loss by the same company.'" *Id.* (quoting Minn. Stat. § 60A.41(b)). In rejecting Farmer's argument, this court stated that section 60A.41(b) "does not require the insured and the other person to be insured by the same policy or to seek coverage under the same policy." *Id.*

In *Schmuckler*, any relevant distinction in section 60A.41(b) between an "insured" and "other person" is unrelated to whether the "insured" is a "named insured." Depositors' reliance on the distinction in section 60A.41(b) between an "insured" and "another person" to support its claim that "insured" means a "named insured" is misplaced. Instead, the relevant circumstances are that both the "insured" and the "other person" are covered for the same loss, by the same company. *Id.* ("[T]he statute does not require the insured and the other person to be insured by the same policy or to seek coverage under the same policy."). Although not required for application of the subrogation preclusion in section 60A.41(b), in this case, Dollansky and Karavan are "insureds" under the *same* policy.

Dollansky argues that the district court correctly determined that he is an insured under section 60A.41(a) and as defined by Depositors' policy. We agree. Because the term "insured" is not defined by statute, we utilize dictionary definitions of those words and apply them in the context of the statute. *See, e.g.*, *A.A.A. v. Minn. Dep't of Human Servs.*, 832 N.W.2d 816, 821 (Minn. 2013) (examining dictionary definitions to define "mobility" and "ambulation" in Minn. Stat. § 256B.0659, subd. 2(b)(6) (2012)).

The dictionary definition of the term "insured" is "[s]omeone who is covered or protected by an insurance policy." *Black's Law Dictionary* 928 (10th ed. 2014). Depositors' policy provides that "[w]e will pay all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto.'" An "[i]nsured" is "any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage." And the "Who Is An Insured" policy provision provides that an "insured" is "[a]nyone . . . using with your permission a covered 'auto' you own, hire or borrow."

Citing several provisions of its policy, Depositors argues that Dollansky is not an insured under its policy because, under the plain language of the policy, certain losses would not be covered and others would be subject to an exclusion. But regardless of coverage under particular sections of Depositors' policy, Dollansky nevertheless is an *insured* under the policy.

The parties do not dispute that Dollansky entered into a contract with Karavan for the motor-home rental. As the district court concluded, "[b]y entering into the rental contract, handing over the keys, and allowing Dollansky to drive away in the [motor home], Karavan gave permission for the Dollanskys to use a vehicle Karavan owned." Dollansky therefore is an "insured" under Depositors' policy issued to Karavan. And because Dollansky is an insured under Depositors' policy, the plain language of Minn. Stat. § 60A.41(a) prohibits Depositors from subrogating against Dollansky.

Depositors argues that the district court's application of section 60A.41 is against public policy because, based on that ruling, "there would never be a recovery in a rental or permissive-use situation wherein a borrower damages the vehicle being borrowed." But, here, Depositors does not allege that Dollanskys caused the damage to the motor home. Moreover, we are "not in a position to choose between public policy choices when [the statute] unambiguously addresses the question before us." *Auto-Owners Ins. Co. v. Second Chance Inv., LLC*, 827 N.W.2d 766, 773 n.3 (Minn. 2013). We conclude that Minnesota Statutes section 60A.41(a) unambiguously bars Depositors' subrogation action.

D E C I S I O N

Because Dollansky is an insured under Depositors' insurance policy, even though not a named insured, and because Minnesota Statutes section 60A.41(a) bars Depositors' subrogation action against its own insured for the same loss, the district court did not err by granting summary judgment in favor of Dollansky.

Affirmed.