STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1511

Andrew LaPalme, et al.,
Appellants,

vs.

Auto-Owners Insurance Company,
Respondent.

Filed June 9, 2025
Reversed and remanded
Ede, Judge

Hennepin County District Court
File No. 27-CV-24-7665

Timothy Johnson, Bill Yang (certified student practitioner), University of Minnesota Insurance Law Clinic, Minneapolis, Minnesota (for appellants)

Steven J. Erffmeyer, Jeffrey M. Markowitz, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Ede, Presiding Judge; Frisch, Chief Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Appellants challenge the district court's order dismissing their complaint for failing to state a claim upon which relief can be granted, arguing that the notice provision in their insurance policy is not a condition precedent to coverage and that, even if it were, the doctrine of impossibility applies and precludes dismissal. In the alternative, appellants

assert that the notice provision is ambiguous and should be construed in their favor. Because we conclude that the notice provision is not a condition precedent to coverage under the insurance policy, we reverse and remand for further proceedings not inconsistent with this opinion.

FACTS

Consistent with applicable law and except where otherwise noted, the following factual summary stems from the allegations set forth in the complaint, which we accept as true and construe in the light most favorable to appellants Andrew and Jennifer LaPalme, who were the nonmoving parties before the district court.[1]

The LaPalmes owned and resided in a home that was insured by respondent Auto-Owners Insurance Company from August 9, 2021, to August 9, 2022. During the applicable period, the Auto-Owners policy provided the LaPalmes with coverage for certain property damage, including loss or damage caused by hail. As relevant here, the policy states that Auto-Owners agrees "to provide insurance subject to all terms and conditions" of the policy and that, in return, the LaPalmes must comply with all policy terms. The policy also provides that Auto-Owners may not be sued "unless there is full compliance with all the terms" of the policy. And the policy contains a notice provision that states in relevant part: "In case of . . . loss or damage by . . . hail, notice of the loss or damage must be given to us or our agency within one year after the date the loss or damage occurred."

[1] *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (explaining that appellate courts "review de novo whether a complaint sets forth a legally sufficient claim for relief[,] . . . accept[ing] the facts alleged in the complaint as true and construe[ing] all reasonable inferences in favor of the nonmoving party" (citations omitted)).

On or after May 11, 2022, the LaPalmes' home was damaged by hail. According to the complaint, the LaPalmes "duly notified Auto-Owners of the May loss in accordance with the Policy." Although the complaint does not specify when the LaPalmes provided notice to Auto-Owners, it is undisputed on appeal and the parties agree that the LaPalmes provided notice of the May 2022 loss to Auto-Owners on June 8, 2023. Auto-Owners acknowledged receipt of the LaPalmes' notice of loss, assigned a claim number, and eventually denied the claim in July 2023.

The LaPalmes commenced suit against Auto-Owners in May 2024, alleging breach of contract and seeking a declaratory judgment. Maintaining that they fulfilled the obligations required by their insurance policy, the LaPalmes asserted that Auto-Owners was in breach because it failed to "approve and pay the amounts due and owing to the [LaPalmes] pursuant to the policy." In support of their declaratory-judgment claim, the LaPalmes maintained that they are entitled to a judgment declaring that Auto-Owners is required to pay repair and replacement costs for damage to their property.

Auto-Owners moved the district court to dismiss the complaint for failure to state a claim upon which relief can be granted under Minnesota Rule of Civil Procedure 12.02(e). Pointing to the use of the word "must" in the notice provision, Auto-Owners argued that the notice provision is a condition precedent to coverage under the insurance policy. And because the LaPalmes did not provide notice of the May 2022 damage until June 8, 2023, Auto-Owners contended that the LaPalmes failed to meet that condition precedent and that dismissal was warranted. The LaPalmes opposed Auto-Owners' motion to dismiss,

asserting that they had sufficiently pleaded their claims and that any failure to comply with the notice provision did not preclude coverage under the policy.

The district court held a motion hearing in July 2024. At the hearing, Auto-Owners elaborated on its argument for dismissal by contending that it had agreed to provide insurance subject to the terms of the policy and that, in return, the LaPalmes likewise needed to comply with the policy's terms. Auto-Owners also maintained that the insurance policy advised the LaPalmes that their failure to abide by a term could result in the loss of coverage.

After taking the matter under advisement, the district court filed an order granting Auto-Owners' motion to dismiss and dismissing the LaPalmes' complaint with prejudice. Although the district court agreed with the LaPalmes that the policy does not contain specific language that the notice provision is a condition precedent, the court nonetheless determined that a condition need not be explicitly labeled as a condition precedent to create one. The district court ruled that the language in the policy did create a condition precedent: that the insured must provide notice of loss before the insurer's duty of performance arises. Reasoning that the LaPalmes failed to articulate an unknown fact or circumstance that made performance impossible, the district court also declined to apply the impossibility defense to the LaPalmes' failure to provide notice to Auto-Owners within one year. And the district court entered judgment for Auto-Owners.

This appeal follows.

DECISION

The LaPalmes challenge the district court's dismissal of their complaint for failure to state a claim upon which relief can be granted. They argue that the district court erred because the notice provision in their insurance policy does not create a condition precedent to coverage. The LaPalmes also contend that, even if the notice provision were a condition precedent, the doctrine of impossibility applies and excuses any failure to provide notice. And they alternatively assert that the notice provision is ambiguous and should be construed in their favor. Because we conclude that the notice provision is not a condition precedent, we address only the LaPalmes' first argument.

As noted above, appellate courts "review de novo whether a complaint sets forth a legally sufficient claim for relief[,] . . . accept[ing] the facts alleged in the complaint as true and construing all reasonable inferences in favor of the nonmoving party." *Walsh*, 851 N.W.2d at 606 (citations omitted).

"The interpretation and construction of insurance policy provisions are matters of law which this court reviews de novo." *Auto-Owners Ins. v. Evergreen, Inc.*, 608 N.W.2d 900, 902 (Minn. App. 2000). Appellate courts "interpret insurance policies using the general principes of contract law." *Midwest Fam. Mut. Ins. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013). Insurance policies are construed "as a whole, and unambiguous language must be given its plain and ordinary meaning." *Wesser v. State Farm Fire & Cas. Co.*, 989 N.W.2d 294, 299 (Minn. 2023). The provisions should also be interpreted according to "what a reasonable person in the position of the insured would have understood the words to mean." *Wolters*, 831 N.W.2d at 636. And "when interpreting an

insurance policy, [appellate courts] will avoid an interpretation that will forfeit the rights of the insured under the policy, unless such an intent is manifest in clear and unambiguous language." *Nathe Bros. v. Am. Nat'l Fire Ins.*, 615 N.W.2d 341, 344 (Minn. 2000) (quotation omitted).

"A condition precedent . . . is any fact or event, subsequent to the making of a contract, which must exist or occur before a duty of immediate performance arises under the contract." *Nat'l City Bank of Minneapolis v. St. Paul Fire & Marine Ins.*, 447 N.W.2d 171, 176 (Minn. 1989); *see also Minn. Law. Mut. Ins. v. Bradshaw & Bryant Law Off. PLLC*, 19 N.W.3d 206, 220 (Minn. App. 2025) (concluding that, although a notice provision in an insurance policy did not use the term "condition precedent," the term "provided that" is "language that sets forth a condition" and was "a condition precedent to coverage" because it "directly connect[ed] coverage with notice"), *petition for rev. filed* (Minn. Apr. 8, 2025).

If a policy provision—here, the notice requirement—"is a condition precedent of liability under the insurance contract, noncompliance with that provision is fatal to recovery." *Cargill, Inc. v. Evanston Ins.*, 642 N.W.2d 80, 87 (Minn. App. 2002), *rev. denied* (Minn. Jun. 26, 2002). But "absent express language making the failure to timely submit the [notice] fatal to the rights of the insured, an insurer must show it was prejudiced to avoid its liability under [the] policy."[2] *Nathe Bros.*, 615 N.W.2d at 347 (citing *Reliance*

[2] *Cf. Cargill*, 642 N.W.2d at 87 (instructing that, on remand, "the fact-finder shall not consider whether the timing of [the insured's] notice prejudiced" the insurer because "[t]he language of the . . . policy *unambiguously state[d] that[,] . . . [a]s a condition precedent* to [the insured's] right to the protection afforded by [the] policy," the policy required that

Ins. v. St. Paul Ins. Cos., 239 N.W.2d 922, 925 (Minn. 1976)); *see also Reliance*, 239 N.W.2d at 924 (considering the issue of prejudice when a notice provision stated that notice "must be given" "[a]s soon as practicable"); *Bach v. Liberty Mut. Fire Ins.*, No. A17-1814, 2018 WL 2769169, at *3–4 (Minn. App. Jun. 11, 2018) (nonprecedential but persuasive opinion considering whether the insured was prejudiced when the notice provision stated that the insured "must give us or our authorized agents[] written notice of an accident within 6 months from the date of the accident").[3]

Here, the insurance policy states that Auto-Owners agrees "to provide insurance subject to all terms and conditions" of the policy and that, in return, the LaPalmes must comply with all the terms of the policy. The policy also provides that Auto-Owners may not be sued "unless there is full compliance with all the terms" of the policy. And the notice provision requires that, in case of loss or damage by hail, "notice of the loss or damage must be given to [Auto-Owners] or [its] agency within one year after the date the loss or damage occurred."

The LaPalmes maintain that the plain and ordinary meaning of the notice provision establishes that it is not a condition precedent to coverage. Auto-Owners counters that construing the notice provision together with the other clauses discussed above compels

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the insured give to the insurer written notice of any claim made against the insured "as soon as practicable" (emphasis added) (quotation omitted)).

[3] "Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c).

the conclusion that the notice provision is a condition precedent. We agree with the LaPalmes.

The Minnesota Supreme Court has declined to read a policy provision as a condition precedent on the basis of other language in the policy that is analogous to the "we-may-not-be-sued" clause here.[4] *See McCullough v. Travelers Cos.*, 424 N.W.2d 542, 544 (Minn. 1988) (concluding that a policy provision stating that "[n]o suit or action on [the] policy for the recovery of any claim . . . [was] sustainable . . . unless all the requirements of [the] policy [had] been complied with" did not convert another provision—which required an examination of the insured under oath—into a condition precedent because nothing in the policy required an examination under oath before suit or otherwise barred suit); *see also Nathe Bros.*, 615 N.W.2d at 347 ("Our holding in *McCullough* makes it clear that the addition of the maintenance of suit clause to [an insurance policy] did not make strict compliance with all its terms a condition precedent to recovery.").

And Minnesota appellate courts have discussed the type of language that does and does not create a condition precedent. Our review of that caselaw persuades us that the policy language at issue falls into the latter category.

Cargill provides an example of a notice provision that we concluded was a condition precedent. 642 N.W.2d at 87. There, the "policy unambiguously state[d] that[,] . . . '*[a]s a condition precedent* to [the insured's] right to the protection afforded by [the] policy, the

[4] Appellate courts have also used the term "maintenance-of-suit" clause to describe this type of policy language. *See Nathe Bros.*, 615 N.W.2d at 347.

Insured shall, as soon as practicable, give to the Company written notice . . . of any claim made against him.'" *Id.* (alteration in original).

By contrast, the policy in *Nathe Bros.* provided in relevant part that, "[i]n the case of any loss under this policy the insured *shall* give immediate written notice to this company of any loss, protect the property from further damage, and a statement in writing, signed and sworn to by the insured, *shall* within 60 days be rendered to the company[.]" 615 N.W.2d at 346 n.4 (emphasis added) (quotation omitted). Construing that provision, the Minnesota Supreme Court concluded that, "absent specific policy language stating that failure to timely submit a sworn proof of loss will be fatal to the rights of the insured or that the submission of a sworn proof of loss is a condition precedent to the liability of the insurer," a failure to submit such proof "will not necessarily bar recovery on a policy." *Id.* at 348.[5] And in *N. Star Mut. Ins. v. Midwest Fam. Mut. Ins.*, we concluded that a notice provision requiring that the insured inform the insurer "as soon as reasonably possible" after a loss, accident, or occurrence "d[id] not create a condition precedent." 634 N.W.2d 216, 220 n.1 (Minn. App. 2001), *rev. denied* (Minn. Dec. 19, 2001);[6] *see also Reliance*, 239 N.W.2d at 924; *Bach*, 2018 WL 2769169, at *3–4.

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[5] That *Nathe Bros.* concerned a proof-of-loss provision and not, as here, a notice-of-loss provision does not alter our analysis. The supreme court's analysis in *Nathe Bros.* was driven by the language of the provision, not by the fact that the provision concerned a proof of loss. 615 N.W.2d at 348.

[6] We have reached similar conclusions in nonprecedential but persuasive opinions that have addressed notice provisions in other contractual contexts. *See, e.g.*, *Robert R. Schroeder Constr., Inc. v. Minn. Dep't of Transp.*, No. A23-0228, 2023 WL 8013124, at *8 (Minn. App. Nov. 20, 2023) (concluding that a notice provision requiring that a contractor "[g]ive written notice to [a s]ubcontractor . . . within a reasonable period, but not more than thirty

We conclude that the language in the notice provision of the LaPalmes' policy aligns with the sort of language used in *Nathe Bros.* and *N. Star Mut. Ins.*, which did not amount to a condition precedent. Indeed, despite stating that "notice of the loss or damage must be given to [Auto-Owners] or [its] agency within one year after the date the loss or damage occurred," the notice provision in Auto-Owners' insurance policy does not contain specific language stating that a failure to give timely notice will be fatal to the LaPalmes' rights or that providing notice within a year was a condition precedent to coverage. *See Nathe Bros.*, 615 N.W.2d at 348 (concluding that failure to submit a timely proof of loss "will not necessarily bar recovery on a policy" providing that "a statement in writing, signed and sworn to by the insured, *shall* within 60 days be rendered to the company" (emphasis added)). We therefore conclude that, without more specific language, the notice provision at issue is not a condition precedent. Given that conclusion, we need not consider the LaPalmes' other arguments.

Because the notice provision is not a condition precedent to coverage, the district court erred in dismissing the LaPalmes' complaint for failing to state a claim upon which

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(30) calendar days, after knowledge of [a] claim" was not a condition precedent because the provision did not "expressly state that notice of a claim is a condition precedent to a claim for indemnification" and did not "expressly stat[e] that a claim by [the] contractor against [the] subcontractor [was] invalid if [the] contractor fail[ed] to comply with the notice-of-claim provision"); *Trooien v. Talon OP, L.P.*, No. A19-1541, 2020 WL 2840230, at *4 (Minn. App. Jun. 1, 2020) (concluding that a provision in a consulting services agreement providing that, "[i]n consideration for all past and future services hereunder, appellants shall pay Trooien a fee," was not a condition precedent because the "plain language" of the agreement did not "describe a clear and unequivocal event that must occur before appellants' contractual duty [could] arise" (quotation omitted)), *rev. denied* (Minn. Aug. 25, 2020).

relief can be granted. Thus, we reverse and remand for further proceedings not inconsistent with this opinion.[7]

Reversed and remanded.

[7] Because the district court neither considered nor decided whether Auto-Owners was prejudiced by the LaPalmes' purported failure to comply with the policy's notice provision, we express no opinion on the merits of whether, on remand, Auto-Owners may avoid liability under the policy by demonstrating such prejudice. *See Nathe Bros.*, 615 N.W.2d at 347.