IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

STATE FARM FLORIDA INSURANCE COMPANY,

Appellant,

v. Case No. 5D19-249

BETH CRISPIN,

Appellee.

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Opinion filed February 7, 2020

Appeal from the Circuit Court
for Brevard County,
Tonya B. Rainwater, Judge.

Kara Rockenbach Link and Daniel M. Schwarz, of Link & Rockenbach, P.A., West Palm Beach, and Robert A. Kingsford and Lynn S. Alfano, of Alfano Kingsford, P.A., Maitland, for Appellant.

Matthew G. Struble and Christine Skubala, of Struble, P.A., Fort Lauderdale, for Appellee.

SASSO, J.

This case presents the issue of whether an insured's public adjuster who is entitled to a contingency fee of insurance proceeds recovered may serve as a "disinterested

appraiser" as required by an insurance contract's alternative dispute resolution process. We answer that question in the negative and reverse the final decree on appeal.

BACKGROUND

State Farm issued Beth Crispin a homeowner's insurance policy that provides for an alternative dispute resolution process—appraisal—to set a disputed amount of loss. The contract mandates a procedure for the appraisal process and states in relevant part:

> Appraisal: If you and we fail to agree on the amount of loss, either party can demand that the amount of the loss be set by appraisal.
>
> . . . .
>
> Each party will select a qualified, **disinterested appraiser** and notify the other of the appraiser's identity within 20 days of receipt of the written demand.

(Emphasis added). In September 2017, Crispin submitted a claim under the policy and retained a public adjuster to assist with the claim. Per her agreement with the adjuster, the adjuster was to serve as Crispin's "agent and representative . . . to adjust, appraise, advise and assist in the settlement of the loss locate[d] at [Crispin's property]." As payment, the agreement provided that his company was entitled to a ten percent contingency fee.

After State Farm issued payment to Crispin for a loss covered under the policy, the adjuster advised State Farm that Crispin was invoking the policy's appraisal provision. Crispin then selected the adjuster as her appraiser. State Farm objected, arguing that the adjuster was "not disinterested with respect to [Crispin's] claim." Ultimately, Crispin filed a petition for declaratory relief seeking a declaration that the adjuster could serve as her appraiser under the terms of the policy. The trial court granted the petition and entered a final decree in favor of Crispin in an unelaborated order.

STANDARD OF REVIEW

Because the trial court's determination in this case rests on a question of law, our review is de novo. *Reform Party of Fla. v. Black*, 885 So. 2d 303, 310 (Fla. 2004).

ANALYSIS

This case turns on the meaning of "disinterested" as contemplated by the parties' contractual agreement. "Where the language in an insurance contract is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning so as to give effect to the policy as written." *Allstate Ins. Co. v. Orthopedic Specialists*, 212 So. 3d 973, 975-76 (Fla. 2017) (citing *Wash. Nat'l Ins. Corp. v. Ruderman*, 117 So. 3d 943, 948 (Fla. 2013)). In doing so, we give an undefined contractual term its plain and ordinary meaning. *Barcelona Hotel, LLC v. Nova Cas. Co.*, 57 So. 3d 228, 230-31 (Fla. 3d DCA 2011) (citing *State Farm Fire & Cas. Co. v. Metro. Dade Cty.*, 639 So. 2d 63, 66 (Fla. 3d DCA 1994)). And we are mindful that we may not "rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." *Intervest Constr. of Jax, Inc. v. Gen. Fid. Ins. Co.*, 133 So. 3d 494, 497 (Fla. 2014) (quoting *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.,* 913 So. 2d 528, 532 (Fla. 2005)).

Applying this framework, our sister court recently considered the precise issue presented in *State Farm Florida Insurance Co. v. Valenti*, 44 Fla. L. Weekly D2953 (Fla. 4th DCA Dec. 11, 2019). Evaluating the same contractual provision and nearly identical facts, the *Valenti* court concluded, based on the actions of the insured's appraiser combined with his financial interest, that the insured's public adjuster in that case was not "disinterested." We agree and conclude that Crispin's adjuster was not disinterested as contemplated by the parties' contract. We write to explain though, as Judge Kuntz did in

his concurring opinion, that an appraiser is not disinterested in an insurance claim if the appraiser is entitled to a percentage of the recovery from the same insurance claim. *See id.* at D2955 (Kuntz, J., concurring specially) ("It is simple: [a] person with a direct financial interest in the outcome is not disinterested.").

Our decision is consistent with our holding in *Florida Insurance Guaranty Ass'n v. Branco*, 148 So. 3d 488, 490 (Fla. 5th DCA 2014), in which we previously contemplated the meaning of "disinterested" in the context of an insurance contract. In *Branco*, this Court addressed whether an insured's attorney could serve as an appraiser under a contract requiring each party in the appraisal process to choose a "competent and disinterested appraiser." 148 So. 3d at 491. This Court noted that the policy provision requiring selection of a disinterested appraiser "expresse[d] the parties' clear intention to restrict appraisers to people who are, in fact, disinterested." *Id.* at 496. Considering the duty of loyalty owed by an attorney to a client, this Court concluded that "attorneys may not serve as their clients' arbitrators or appraisers when 'disinterested' arbitrators or appraisers are bargained for." *Id.*

The reasoning in *Branco* applies equally to the insurance contract between State Farm and Crispin. As in *Branco*, the parties here have bargained for the selection of a "disinterested appraiser." As in *Branco*, the parties' contract does not define the term "disinterested." Nevertheless, we can discern a clear meaning by interpreting the term "disinterested" according to its plain and ordinary meaning. And any ordinary meaning of the term "disinterested" precludes a financial stake in the outcome. *See Merriam-Webster's Collegiate Dictionary* 358 (11th ed. 2003) (defining "disinterested" as "not having the mind or feelings engaged," "no longer interested," and "free from selfish motive

or interest"); *The American Heritage Dictionary of the English Language* 518 (5th ed. 2016) (defining "disinterested" as "[f]ree of bias and self-interest; impartial," and, in usage note, elaborating that "[t]raditionally, disinterested can only mean 'having no stake in an outcome'") (emphasis removed); Bryan A. Garner, *Garner's Modern English Usage* 290 (4th ed. 2016) (noting that "[a] disinterested observer is not merely 'impartial' but has nothing to gain from taking a stand on the issue in question").

Crispin, relying on *Rios v. Tri-State Insurance Co.*, 714 So. 2d 547 (Fla. 3d DCA 1998), argues, inter alia, that her contingent fee appraiser qualifies as a "competent, independent appraiser." "Independent," however, carries a very different meaning than "disinterested." *Compare Independent*, Black's Law Dictionary (10th ed. 2014) (defining "independent" as "not subject to the control or influence of another"), *with Disinterested*, Black's Law Dictionary (10th ed. 2014) (defining "disinterested" as "[f]ree from bias, prejudice, or partiality . . . not having a pecuniary interest in the matter at hand"). Thus, *Rios* is not instructive. And the distinction between the terms "independent" and "disinterested," in our view, is legally significant. As such, we disagree to the extent the Third District reached a contrary conclusion in *Galvis v. Allstate Insurance Co.*, 721 So. 2d 421, 421 (Fla. 3d DCA 1998).

In sum, we conclude that "disinterested" is unambiguous, and its plain meaning excludes those with a pecuniary interest in the outcome. Consequently, Crispin's selected appraiser, who was entitled to a ten percent contingency fee of any proceeds received in the disputed claim, cannot serve as her appraiser pursuant to the parties' bargained-for agreement.

REVERSED.

COHEN and WALLIS, JJ., concur.