NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE FARM FLORIDA INSURANCE COMPANY, Appellant, v. JON PARRISH, Appellee.	)	Case No. 2D19-130

Opinion filed January 6, 2021.

Appeal from Collier County; Frederick Hart, 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.

Mark A. Boyle, Gregory L. Evans, and Alicia M. Lopez of Boyle Leonard & Anderson, P.A., Fort Myers, for Appellee.

LUCAS, Judge.

State Farm Florida Insurance Company (State Farm) and its insured, Jon Parrish, find themselves in a dispute over who can appraise the value of Mr. Parrish's covered loss. Although we question the manner in which the dispute was presented

below, because the judgment the circuit court entered was indeed a final judgment, we exercise our jurisdiction under Florida Rule of Appellate Procedure 9.030(b)(1)(A). With the benefit of the parties' briefs, oral argument, and supplemental briefs, we conclude that State Farm's argument on appeal is well taken. Mr. Parrish will need to select someone other than his public adjuster to serve as a "disinterested appraiser" of his claim.

I.

In 2017, Mr. Parrish submitted a claim to State Farm under his homeowners insurance policy, asserting that his house had sustained damage from Hurricane Irma. He retained a public adjusting company, Keys Claims Consultants, Inc. (KCC), to represent his interests regarding his claim. Pursuant to his contract with KCC, KCC agreed to "prepare a detailed accounting of the damages and present them" to State Farm. KCC would "negotiate the damages with the insurance company representative(s)" and was authorized to invoke "the Appraisal provision" under Mr. Parrish's insurance policy. In return, Mr. Parrish assigned to KCC ten percent "of all insurance funds, contractual and extra contractual, received" by Mr. Parrish. Mr. Parrish also gave KCC "a right to be paid as a joint payee" of State Farm under his contract with KCC.

On January 8, 2018, Bobby Sims, a KCC public adjuster, forwarded Mr. Parrish's executed sworn statement in proof of loss to State Farm which valued Mr. Parrish's loss at $495,079.25. Along with the sworn statement, Mr. Sims requested that any dispute over the amount of loss be submitted to appraisal pursuant to the policy.

The specific policy provision Mr. Sims was invoking on behalf of his client reads, in pertinent part, as follows:

> 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. A demand for appraisal must be in writing. . . .
>
> 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. Each party shall be responsible for the compensation of their selected appraiser. The two appraisers shall then select a qualified disinterested umpire. . . . Reasonable expenses of the appraisal and the reasonable compensation of the umpire shall be paid equally by you and us.
>
> The appraisers shall then set the amount of the loss.

In his correspondence to State Farm, Mr. Sims designated George Keys, the president and namesake of KCC, as Mr. Parrish's "disinterested appraiser." Not surprisingly, State Farm objected to his selection; it also disagreed with the amount Mr. Parrish claimed as his loss.[1] State Farm issued its own demand for appraisal and appointed Bob Davis of Davis Claim Management as its appraiser. It also asked Mr. Parrish to choose a different appraiser. When Mr. Parrish did not respond, State Farm initiated an action—of some sort—in the circuit court.

On May 5, 2018, State Farm filed a "Petition to Compel Appraisal with Disinterested Appraiser." This "petition" set forth in enumerated paragraphs a sequence of factual allegations (not unlike a civil cause of action), a separate section of legal argument explaining why, in State Farm's view, Mr. Keys should not be allowed to serve as a disinterested appraiser under the policy, and a request that the court "enter

[1]State Farm indicated that its estimate of the loss was $295,298.70, and it offered to pay Mr. Parrish $107,156.84.

an order compelling [Mr. Parrish] to participate in appraisal with a disinterested appraiser not affiliated with Keys Claims Consulting, Inc." Mr. Parrish responded to the petition as if it were a civil action, admitting and denying the factual allegations and setting out his own "Legal Argument in Response to Petitioner's Argument." He addressed the legal issue of whether the appraiser he had named was "disinterested." Additionally, he argued that the petition should be dismissed because it was premature and because State Farm had waived its ability to object to his designation. None of his arguments, however, challenged State Farm's choice of filing what purports to be a petition to judicially compel him to appoint a different appraiser in this dispute.

The circuit court proceeded to set a hearing on State Farm's petition—though whether that was a "trial" or, as State Farm puts it, a procedure that "functioned much like a final summary judgment hearing," it is not entirely clear. Regardless, on December 18, 2018, the circuit court entered the order now before us in which the court determined that Mr. Keys could serve as a disinterested appraiser despite his company's contractual relationship with Mr. Parrish and the ten percent contingency fee KCC would earn from any payment Mr. Parrish received from his claim. The order both denied the petition and then stated that it was "hereby dismissed in its entirety." The court ordered the parties to proceed to appraisal and retained jurisdiction to award Mr. Parrish his attorney's fees and costs in connection with the petition.

State Farm now appeals that order.

II.

A.

At the outset, we confess we have some confusion, as well as reservations, about what it is we have been asked to review. Florida Statutes describe many different civil petitions that litigants may avail themselves of, but a petition to compel appraisal with a disinterested appraiser is not (yet) one of them. Nor is there a recognized common law cause of action for this kind of discrete claim. That would seem to be problematic. Cf. State Farm Fla. Ins. Co. v. Gonzalez, 76 So. 3d 34, 37, 38 (Fla. 3d DCA 2011) (reversing judgment on a "petition to confirm appraisal award" and remanding to allow petitioners to refile the action as a civil complaint because "[t]here is no rule or statute allowing for the filing of a petition to confirm an appraisal award" (emphasis omitted)).

It was because of this concern that, following oral argument, we requested supplemental briefing from the parties as to whether we should convert this appeal to a petition for a writ of certiorari. Mr. Parrish readily agreed that we should (and then, as such, deny State Farm certiorari relief). State Farm maintained that its petition to compel disinterested appraiser could be likened to a declaratory judgment action. The difficulty with that, of course, is that State Farm's petition did not actually seek a declaratory judgment or include any allegation that State Farm was in doubt of a right, status, immunity, or privilege and was entitled to have that doubt removed[2] or invoke chapter 86 of the Florida Statutes in any way—and we cannot believe that was unintentional. To the contrary, State Farm's filing was styled, framed, and constructed,

[2]See Golfrock v. Lee County, 247 So. 3d 37, 38 (Fla. 2d DCA 2018) ("To state a claim for declaratory relief, the party seeking the declaration must show that he is in doubt as to the existence or nonexistence of some right, status, immunity, power, or privilege and that he is entitled to have such doubt removed." (citing May v. Holley, 59 So. 2d 636, 638–39 (Fla. 1952))).

from beginning to end, as if there were a legally recognized, standalone cause of action to have a disinterested appraiser appointed in an insurance coverage dispute. But there isn't.

Nevertheless, despite our concerns with the filing that precipitated the circuit court's order, we will treat it as a "final order." For that is what the order appears to be. It is an order that concluded a civil case (such as it was) that had been filed with the circuit court. See S.L.T. Warehouse Co. v. Webb, 304 So. 2d 97, 99 (Fla. 1974) ("Generally, the test employed by the appellate court to determine finality of an order, judgment or decree is whether the order in question constitutes an end to the judicial labor in the cause, and nothing further remains to be done by the court to effectuate a termination of the cause as between the parties directly affected."). And because it is a final order, State Farm has a constitutional right to our review. See art. V, § 4(b)(1), Fla. Const.; In the Interest of J.B., 101 So. 3d 407, 410 (Fla. 2d DCA 2012).

B.

State Farm contends that Mr. Keys could not be a "disinterested appraiser" as that term is used in the policy. Because the facts that were put before the circuit court are not in dispute, the only issue we must decide is what this policy term means. That is an issue we review de novo. Am. S. Home Ins. Co. v. Lentini, 286 So. 3d 157, 158 n.2 (Fla. 2019); Ganzemuller v. Omega Ins. Co., 244 So. 3d 1189, 1190 (Fla. 2d DCA 2018).

The policy does not define "disinterested." We must, therefore, ascertain the plain meaning of the policy's term. See Allstate Ins. Co. v. Orthopedic Specialists, 212 So. 3d 973, 975-76 (Fla. 2017) ("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." (quoting Wash. Nat'l Ins. Corp. v. Ruderman, 117 So. 3d 943, 948 (Fla. 2013))); Fla. Ins. Guar. Ass'n v. Branco, 148 So. 3d 488, 491 (Fla. 5th DCA 2014) ("Appraisals are creatures of contract and the subject or scope of appraisal depends on the contract provisions. Absent ambiguity, the plain meaning of an insurance policy controls." (citation omitted)); see also Lenzi v. Regency Tower Ass'n, 250 So. 3d 103, 105 (Fla. 4th DCA 2018) ("[U]nless they are defined, 'terms should be given their plain and unambiguous meaning as understood by the "man-on-the-street." ' " (quoting Harrington v. Citizens Prop. Ins. Corp., 54 So. 3d 999, 1001 (Fla. 4th DCA 2010))). Here, the term "interested" is an adjective describing an appraiser who holds an interest—that is, a stake of some sort, whether pecuniary, proprietary, or personal—in the outcome of the appraisal process. The prefix "dis" connotes its negative—so "disinterested" means an appraiser who does *not* hold an interest in the outcome of the policy's appraisal process.

As is clear from the policy provision, the conclusion of the appraisal process results in a recommended monetary award of some amount. Indeed, that is the point of the endeavor. And a contingency stake in a potential monetary award—such as this one—constitutes a pecuniary "interest." Cf. Landmark Am. Ins. Co. v. H. Anton Richardt, DDS, PA, No. 2:18-cv-600-FtM-29UAM, 2019 WL 2462865, at *2, *3 (M.D. Fla. June 13, 2019) (disqualifying insured's selected appraiser who had "a direct financial interest in the outcome of the appraisal" because "[a] pecuniary interest in the outcome is by definition a personal interest that favors one side over the other"); Shores at Coco Plum Condo. Ass'n v. Westchester Surplus Lines Ins. Co., No. 18-23910-Civ-

COOKE/GOODMAN, 2019 WL 2223172, at *2 (S.D. Fla. Apr. 29, 2019) (holding that insured's selected appraiser, who was to "be compensated on a contingency fee basis" could not serve as an impartial appraiser). An interest in the appraisal award, then, is part and parcel of an interest in the process' outcome.

Mr. Keys, as the president of Mr. Parrish's public adjusting firm, "has a vested interest in obtaining the highest possible recovery because [his] compensation will be a percentage of it." See Verneus v. Axis Surplus Ins. Co., No. 16-21863-CIV-MARTINEZ/GOODMAN, 2018 WL 3417905, at *6 (S.D. Fla. July 13, 2018). KCC's ten percent interest in the amount awarded in the appraisal process necessarily makes its president interested in the outcome of the process. For that reason alone, he is not a "disinterested appraiser." We are not the first court to reach that conclusion. See State Farm Fla. Ins. Co. v. Crispin, 290 So. 3d 150, 153 (Fla. 5th DCA 2020) ("[A]ny ordinary meaning of the term 'disinterested' precludes a financial stake in the outcome."); Landmark Am. Ins. Co., 2019 WL 2462865, at *3; Shores at Coco Plum Condo. Ass'n, 2019 WL 2223172, at *2; Verneus, 2018 WL 3417905, at *6-7; see also State Farm Fla. Ins. Co. v. Sanders, 45 Fla. L. Weekly D870, D873 (Fla. 3d DCA Apr. 15, 2020) (Fernandez, J., concurring) ("[T]he plain and ordinary meaning of disinterested includes free of self-interest or pecuniary interest. When an appraiser has a direct financial interest in the outcome of the appraisal, the appraiser is not disinterested." (quoting State Farm Fla. Ins. Co. v. Valenti, 285 So. 3d 958, 960-61 (Fla. 4th DCA 2019) (Kuntz, J., concurring))).

It is true, as Mr. Parrish points out, that the appraisal provision requires the insured and the insurer to pay their designated appraisers for their work. Mr.

Parrish will have to pay his appraiser in some fashion. It is also true that the policy does not expressly proscribe a particular method of payment (the policy simply states each party is "responsible for the compensation" of their respective appraisers). All that means, though, is that the policy's requirement of a "disinterested appraiser" does not foreclose financial remuneration for the appraiser's services and that the parties and their appraisers are free to negotiate a mutually agreed upon payment, so long as the form of payment does not give rise to an interest in the outcome of the appraisal process. Cf. City of Homestead v. Johnson, 760 So. 2d 80, 84 (Fla. 2000) (holding that courts should "read provisions of a contract harmoniously in order to give effect to all portions thereof" (citing Sugar Cane Growers Coop. of Fla., Inc., v. Pinnock, 735 So. 2d 530, 535 (Fla. 4th DCA 1999); Paddock v. Bay Concrete Indus., Inc., 154 So. 2d 313, 315 (Fla. 2d DCA 1963))).

A contingency form of payment is uniquely problematic under this provision because the amount of the appraiser's remuneration is inextricably tied to the amount of the award the appraiser will ultimately recommend. The bigger the award, the bigger the payment. It is that link between payment and award that makes the contingency-paid appraiser prohibitively interested in the outcome of the appraisal process, which is a condition the policy expressly prohibits.

Besides the interest KCC and Mr. Keys hold through KCC's ten percent stake in the appraisal award, there is also the separate, broader, and glaringly apparent interest they have in the appraisal process by virtue of the fact that *KCC is representing Mr. Parrish in the underlying dispute*. Even if KCC is not, as Mr. Parrish stresses, his "fiduciary" or his "agent" (which we need not decide), KCC is contractually bound to

negotiate with State Farm on Mr. Parrish's behalf. And as Mr. Parrish's public adjuster, KCC's adjusters are professionally bound to handle Mr. Parrish's claim "with dispatch and due diligence" and not "approach investigations, adjustments, and settlements in a manner prejudicial to the insured." See Fla. Admin. Code 69B-220-201; see also § 626.878, Fla. Stat. (2018) (requiring adjusters to subscribe to the Department of Insurance's code of ethics).

Other than nominating Mr. Parrish himself (or a member of his family), it would be difficult to imagine a more self-evidently interested person in an appraisal process than the person or firm that represents Mr. Parrish in that very process, especially since the policy's "disinterested appraiser" is essentially acting as an independent adjudicator of a dispute.[3] Cf. Branco, 148 So. 3d at 496 ("The policy provision, which requires a 'disinterested appraiser,' expresses the parties' clear intention to restrict appraisers to people who are, in fact, disinterested. Given the duty of loyalty owed by an attorney to a client, we conclude that attorneys may not serve as their clients' arbitrators or appraisers when 'disinterested' arbitrators or appraisers are bargained for.").[4] Mr. Keys cannot serve as a disinterested appraiser (in any meaningful sense of that term) in an appraisal process of his client's dispute.

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[3]The ancient natural justice maxim of *nemo judex in causa sua* holds a powerful compulsion even in proceedings outside of courtrooms. Cf. State v. Aldridge, 103 So. 835, 836 (Ala. 1925) (disqualifying certified public accountants from sitting on a review board in a license revocation proceeding they had funded and supported and observing that "the decided weight of authority" would extend the rule of judicial disqualification "to every tribunal exercising judicial or quasi-judicial functions").

[4]The conclusion Branco reached concerning an insured's attorney applies perforce to an insured's public adjuster. Although the means and methods of their work may differ, an insured hires a public adjuster or a lawyer for much the same purpose in these disputes: to maximize the insured's financial recovery on the policy.

III.

We hold that a public adjuster that has a contingency interest in an insured's appraisal award or represents an insured in an appraisal process is not a "disinterested appraiser" under this insurance policy's appraisal provision. The circuit court did not have the benefit of our decision today when it issued its ruling and instead relied upon the Third District's holding in Brickell Harbour Condominium Ass'n v. Hamilton Specialty Insurance Co., 256 So. 3d 245, 249 (Fla. 3d DCA 2018) ("[A]n appraiser's 'direct or indirect financial interest in the outcome of the arbitration,' including an arrangement for a contingent fee, requires disclosure rather than disqualification in the case of an appraiser."); accord Sanders, 45 Fla. L. Weekly at D871 (denying certiorari relief but certifying question of great public importance about whether a public adjuster "who is in a contractual agent-principal relationship with the insureds and who receives a contingency fee from the appraisal award" can be a disinterested appraiser as a matter of law). For all the reasons set forth in this opinion, we do not find Brickell's analysis persuasive. We certify conflict with Brickell to the extent it holds that a public adjuster who has a contingency interest in an insured's appraisal award or represents an insured in an appraisal process can serve as a "disinterested appraiser" under a policy's appraisal provision.

Reversed and remanded; conflict certified.

CASANUEVA and KELLY, JJ., Concur.