MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Colby A. Barkes
Blachly, Tabor, Bozik & Hartman, LLC
Valparaiso, Indiana

ATTORNEYS FOR APPELLEE

James J. Shea, Sr.
Stephen E. Dever
Jeremy D. Lemon
Hunt Suedhoff Kalamaros, LLP
Fort Wayne, Indiana

IN THE COURT OF APPEALS OF INDIANA

Blachly, Tabor, Bozik & Hartman, LLC,

Appellant-Plaintiff,

v.

Auto-Owners Insurance Company,

Appellee-Defendant.

February 18, 2021

Court of Appeals Case No. 20A-CT-1603

Appeal from the Porter Superior Court

The Honorable Mary A. DeBoer, Judge

Trial Court Cause No. 64D05-1811-CT-10704

Mathias, Judge.

[1] Blachly, Tabor, Bozik & Hartman, LLC, ("BTBH") appeals the Porter Superior Court's grant of summary judgment in favor of Auto-Owners Insurance Company ("Auto-Owners").

[2] We affirm.

Facts and Procedural History

[3] In November 2016, BTBH had a commercial automobile insurance policy ("Policy") with Auto-Owners that covered attorney Jeffrey Wrage—a member of BTBH—and his Jeep. On Saturday, November 12, Wrage was at the home of his girlfriend, Benita Capps. Around 5:30 p.m., Wrage was backing his Jeep out of Capps's garage when he "caught the brake light" on the smaller of two garage doors while it "was in the process of going up." Appellant's App. Vol. II, p. 148. Though the smaller garage door sustained damage, the larger door was not affected.

[4] On November 16, Auto-Owners received notice of the accident. The notice included a quote—that Wrage had secured two days prior—from Overhead Door Company of Northwest Indiana ("Overhead") for replacing both garage doors at a total cost of $2,272.50. *Id.* at 156–57. Over the next week, employees with Auto-Owners spoke with Wrage and Capps and told each of them that the Policy did not cover replacement of the undamaged door. *Id.* at 158–60. Wrage disagreed and argued "quite strenuously" with an employee, telling her she was "wrong and the [Policy] will pay for both doors." *Id.* at 160.

[5] Capps expressed a similar opinion. Though she confirmed to Auto-Owners's branch-manager, Aaron Weber, that Wrage's vehicle "did not do any physical damage to" the larger garage door, Capps felt it was "a line of sight issue that [Auto-Owners] should, and will be responsible for taking care of." *Id.* at 158–59. Weber advised Capps that Auto-Owners "would only be liable and paying for direct damage to" the smaller door. *Id.* at 159. That same day, Weber spoke with Overhead and received a quote for replacing the damaged garage door at a cost of $1,000.

[6] On November 22, BTBH sent Auto-Owners a letter in which counsel for BTBH asserted that "[a] replacement of one [garage] door necessitates the replacement of the other to ensure they match." *Id.* at 163. Counsel also remarked, "my client will order the replacement of the doors at issue, pay for them out of pocket, and seek reimbursement from" Auto-Owners. *Id.* The same day BTBH sent the letter, Wrage made the first of two payments to Overhead for the replacement of both garage doors. He made the second payment on December 8.

[7] Also on December 8, Weber sent a letter in response to BTBH. Weber again indicated that the Policy did not cover replacement of the undamaged garage door, and he concluded the correspondence by noting that Auto-Owners would reimburse $1,000 to BTBH if it chose to pay for replacement of the damaged door. At the time, Weber did not know that Wrage had already paid Overhead to replace both garage doors. Our review of the record indicates that BTBH took no further action for nearly two years.

[8] Then, in November 2018, BTBH filed a complaint for damages against Auto-Owners, raising three claims: (1) breach of contract; (2) violation of the Unfair Settlement Practices Act; and (3) bad-faith dealing. *Id.* at 2–5. BTBH sought punitive damages on the latter two claims. On February 4, 2020, Auto-Owners moved for summary judgment and designated evidence in support of its motion. BTBH filed a response a few months later, and, on August 3, the trial court held a short hearing on the motion. After hearing argument from both parties, the court remarked, "I am baffled by why this is here. I get in the abstract that somebody's knickers got in a wad about this second garage door, but I'm not sure why it's here." Tr. p. 18. Later that day, the court granted summary judgment in favor of Auto-Owners on all three claims. BTBH now appeals that decision.[1]

Standard of Review

[9] When reviewing a summary-judgment ruling, we use the same standard as the trial court. *See, e.g.*, *McMurray v. Nationwide Mut. Ins. Co.*, 878 N.E.2d 488, 490 (Ind. Ct. App. 2007), *trans. denied*. Summary judgment is appropriate when the designated evidence reveals that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). In making this determination, we liberally construe the evidence and

[1] We note that none of BTBH's appendix volumes include "the chronological case summary for the trial court" as required by Indiana Appellate Rule 50(A)(2)(a). We encourage counsel to be more mindful of our appellate rules in the future.

reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. *McMurray*, 878 N.E.2d at 490. We may affirm summary judgment on any legal theory supported by the record. *Keaton & Keaton v. Keaton*, 842 N.E.2d 816, 821 (Ind. 2006).

Discussion and Decision

[10] The material facts here are not in dispute; therefore, we need only determine whether the trial court correctly applied the law. Though the parties raise several issues on appeal, we find the following issue dispositive: whether Auto-Owners breached the Policy with BTBH.[2]

[11] Generally, an insurance policy is a contract of indemnity through which an insurer undertakes an obligation to compensate an insured against loss arising from specified occurrences or perils. *Motorists Mut. Ins. Co. v. Morris*, 654 N.E.2d 861, 863 (Ind. Ct. App. 1995); *see also* Ind. Code § 27-1-2-3(a) (defining "insurance"). Interpretation of an insurance policy presents a legal question that is particularly suitable for summary judgment, and we interpret the policy the same way we interpret other contracts. *State Auto. Mut. Ins. Co. v. Flexdar, Inc.*, 964 N.E.2d 845, 848 (Ind. 2012); *Morris v. Econ. Fire & Cas. Co.*, 848 N.E.2d

[2] The trial court found Auto-Owners "is entitled to judgment as matter of law" on all three of BTBH's claims: (1) breach of contract; (2) violation of the Unfair Settlement Practices Act; and (3) bad-faith dealing. Appellant's App. Vol. III, p. 46. BTBH has aptly abandoned its claim under the Unfair Settlement Practices Act. *See* Tr. p. 18 (recognizing that language in the Act "may . . . forbid a cause of action); Ind. Code § 27-4-1-18. And BTBH concedes that its bad-faith claim, which is the only remaining basis for punitive damages, is viable only if we find Auto-Owners breached. Appellant's Br. at 10; Reply Br. at 15; *see Knight v. Ind. Ins. Co.*, 871 N.E.2d 357, 362 (Ind. Ct. App. 2007).

663, 666 (Ind. 2006). When the policy language is clear and unambiguous, we give the language its plain and ordinary meaning. *Briles v. Wausau Ins. Co.*, 858 N.E.2d 208, 213 (Ind. Ct. App. 2006).

[12] Here, both parties direct us to the Policy's liability-coverage provision which provides, in relevant part,

> We will pay all sums an insured legally must pay as damages because of . . . **property damage** to which this insurance applies, **caused by an accident** and resulting from the ownership, maintenance[,] or use of a covered auto as an auto.
>
> ***
>
> We will investigate, settle[,] or defend, as we consider appropriate, any claim or suit for damages . . . covered by this policy.

Appellant's App. Vol. II, p. 204 (emphasis added). The Policy defines "property damage" as "damage to or destruction of tangible property including resulting loss or use of that property." *Id.* at 217.

[13] BTBH argues Auto-Owners breached its "contractual duty to pay for all sums an insured must pay because of property damage . . . by refusing to pay for Capps'[s] overhead garage door, including replacement of a second garage door[.]" Appellant's Br. at 12. Based on the clear and unambiguous language of the Policy and the other designated evidence, we disagree.

[14] It is undisputed that the only "property damage" caused by the accident was to Capps's smaller garage door. Yet, BTBH maintains that the Policy also required Auto-Owners to replace the undamaged garage door to ensure the two doors would match. *See* Appellant's Br. at 5, 12, 18. In support of this argument, BTBH cites to *Erie Ins. Exch. v. Sams*, 20 N.E.3d 182 (Ind. Ct. App. 2014), asserting that "Indiana cases support BTBH's interpretation that 'matching' is required to fully compensate under an insurance agreement." Appellant's Br. at 10 n.2. However, BTBH is mistaken, and its reliance on *Erie* is misplaced. In that case, the trial court found that optional replacement coverage in a homeowners' insurance policy applied to the entire roof and outside siding of a home that had been damaged in a windstorm. 20 N.E.3d at 190–92. But here, the trial court made no such finding; and BTBH has not directed us to a similar replacement-coverage provision, or any Policy language, that would require Auto-Owners to pay for a "matching," undamaged garage door. In short, under the Policy, Auto-Owners was at most required to pay for damages to the smaller garage door. And the designated evidence establishes that Auto-Owners complied with the Policy's terms.

[15] Once Auto-Owners learned of the accident, it investigated the claim, obtained an estimate of $1,000 to replace the damaged garage door, and informed Wrage and Capps that it would pay that amount. *See* Appellant's App. Vol. II, pp. 158–59. Yet, BTBH maintained that the Policy also covered replacement of the undamaged garage door, and so, BTBH indicated it would pay to replace both

garage doors and seek reimbursement from Auto-Owners. *Id.* at 163–64.[3] Auto-Owners replied and correctly explained that because the larger garage door was not damaged, Auto-Owners had no obligation to pay for its replacement under the Policy. *See Allgood v. Meridian Sec. Ins. Co.*, 836 N.E.2d 243, 248 (Ind. 2005) (observing that ambiguity in a contract "is not established simply because controversy exists"). Despite having already explained this to Wrage and Capps on previous occasions, Auto-Owners agreed to reimburse BTBH $1,000 for the cost to replace the smaller, damaged garage door. And while it does not appear that BTBH ever responded, the record indicates that Auto-Owners's "offer of $1,000 to pay for the damaged door" remained open several months later. Appellant's App. Vol. II, p. 158. That BTBH has refused to accept payment does not change the fact that Auto-Owners is willing to "pay all sums an insured legally must pay" for the "property damage" to Capps's smaller garage door.

[16] In sum, the Policy unambiguously covered only the garage door damaged in the accident, and Auto-Owners did not breach by refusing to pay for replacement of the larger, undamaged door. The designated evidence further

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[3] That same day, unbeknownst to Auto-Owners, Wrage made the first of two payments to Overhead for the replacement of both garage doors. *See* Appellant's App. Vol. III, p. 6. The Policy, however, mandates that the insured must "[a]ssume no obligation, make no payment or incur no expense without [Auto-Owners's] consent, except at the insured's own cost." Appellant's App. Vol. II, p. 212. If the insured does not comply with that provision, Auto-Owners has "no duty to provide coverage under" the Policy. *Id.* Thus, Auto-Owners argues that "Wrage's voluntary payment relieves Auto-Owners of all obligations under the policy." Appellee's Br. at 10; *see Klepper v. ACE Am. Ins. Co.*, 999 N.E.2d 86, 96–97, 97 n.9 (Ind. Ct. App. 2013), *trans. denied*. BTBH disagrees. Because we resolve this case on whether Auto-Owners breached, we need not address the party's arguments on the effect of Wrage's payments.

establishes that Auto-Owners fulfilled its obligations under the Policy by investigating the claim and consistently offering to pay for the only "property damage" caused by the accident. As a result, Auto-Owners is entitled to judgment as a matter of law.

Conclusion

[17] We affirm the trial court's grant of summary judgment in favor of Auto-Owners.

[18] Affirmed.

Altice, J. and Weissmann, J. concur.