[Cite as *190 E. 15th Ave., L.L.C. v. State Farm Fire & Cas. Co.*, 2026-Ohio-3242.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

190 E. 15th Avenue, LLC,	:	
Plaintiff-Appellant,	:	No. 24AP-607
v.	:	(C.P.C. No. 21CV-76)
State Farm Fire and Casualty Company,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on August 20, 2026

On brief: *Kevin E. Humphreys*, for appellant. **Argued:** *Kevin E. Humphreys*.

On brief: *Gallagher, Gams, Tallan, Barnes and Littrell, LLP*, and *Lori E. Thomson*, for appellee. **Argued:** *Lori E. Thomson*.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Plaintiff-appellant, 190 E. 15th Avenue, LLC, appeals the judgment of the Franklin County Court of Common Pleas in favor of defendant-appellee, State Farm Fire and Casualty Company ("State Farm"). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} State Farm provided insurance coverage to appellant and its property with respect to covered losses. This appeal arises from water damage that occurred to a vacant rental property that appellant owned and State Farm's subsequent denial of insurance coverage.

{¶ 3} On January 6, 2020, Alex Ocanas, one of appellant's maintenance supervisors, was called to the property at 190 E. 15th Avenue to turn off the water. When he arrived, water was coming through the ceiling. He identified the source of the leak as a split pipe between the second and third floors. He testified at trial that he had winterized the property in the fall of 2019 by turning off the main water valve, opening the other valves in the house to drain the pipes, then pouring antifreeze in the toilets and drain traps. Ocanas also testified that he had visited the property in December 2019 to repair a broken window and believed the water was off at that time. He described the water damage he saw on January 6 as the worst he had seen in 15 years of property management maintenance work.

{¶ 4} Jack Beatley, the owner of 190 E. 15th Avenue, testified that he was hosting showings of the property to potential renters from September through December and did not have any reported water issues at the property before he left to spend Christmas in Florida. Beatley was in Florida on January 6, 2020, when he received a call from one of his employees about the water damage at the property. When he arrived the next morning, he was able to observe the extent of the damage.

{¶ 5} Robert Kelley, Jr., an inspector for State Farm, reviewed the property damage at 190 E. 15th Avenue on January 20, 2020, and met with Ocanas there. He testified that he observed the broken pipe and determined it had been damaged by freezing. He asked Ocanas about the winterization procedures and whether heat had been maintained in the building. He asked for the gas company bills as well as records for their winterization. He testified that State Farm did not receive the records requested.

{¶ 6} Ultimately, State Farm denied coverage for the claim.

{¶ 7} On January 6, 2021, appellant filed a complaint against State Farm, asserting that State Farm had failed to provide coverage in breach of the insurance policy.

{¶ 8} The case proceeded to a jury trial before a magistrate. Following the jury trial, the jury returned a verdict in favor of State Farm. On June 28, 2024, the trial court entered judgment in favor of State Farm.

{¶ 9} On July 26, 2024, appellant moved for judgment notwithstanding the verdict pursuant to Civ.R. 50(B) and for a new trial pursuant to Civ.R. 59, arguing that the jury's answer to Interrogatory No. 2 was unsupported by the evidence and in direct conflict with the property loss. On September 4, 2024, the magistrate issued a decision denying the motion. The trial court entered final judgment consistent with the magistrate's decision on September 5, 2024.

II. Assignments of Error

{¶ 10} Appellant timely appeals and assigns the following two assignments of error for our review:

> [I.] THE JURY'S "NO" RESPONSE TO JURY INTERROGATORY 2, AND THE RESULTING VERDICT OF THE JURY WAS MADE IN ERROR, BEING CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.
>
> [II.] THE VERDICT OF THE JURY WAS MADE IN ERROR, AS THE APPELLEE-INSURER FAILED TO INTRODUCE SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.

III. Discussion

{¶ 11} In the first assignment of error, appellant argues that the jury's "no" response to Interrogatory No. 2 was against the manifest weight of the evidence because the evidence established that an insurance policy existed and that damages or losses were sustained to the property with the coverage provisions of the policy. Appellant contends that, if the jury had acted in conformity with the evidence, it would have answered "yes" to Interrogatory No. 2 then proceeded as instructed to Interrogatory No. 3 to consider the affirmative defense of whether an exclusion to coverage applied.

{¶ 12} A manifest weight claim "attacks the credibility of the evidence presented and questions whether the state met its burden of persuasion." *State v. Harris*, 2026-Ohio-2492, ¶ 10 (10th Dist.), citing *State v. Richey*, 2018-Ohio-3498, ¶ 50 (10th Dist.), citing *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 11-13; *see also State v. Reillo*, 2026-Ohio-2701, ¶ 25 (reaffirming the manifest-weight standard as it was explained in *Eastley* at ¶ 12). In conducting a manifest weight review, a court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." (Cleaned up.) *Reillo* at ¶ 26. " 'In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.' " *Id.* at ¶ 28, quoting *Eastley* at ¶ 21.

{¶ 13} " 'It is undisputed that one seeking to recover on an insurance policy generally has the burden of proving a loss and demonstrating coverage under the policy.' " *Sharonville v. Am. Employers Ins. Co.*, 2006-Ohio-2180, ¶ 19, quoting *Inland Rivers Serv. Corp. v. Hartford Fire Ins. Co.*, 66 Ohio St.2d 32, 34 (1981). However, an insurer bears the burden of establishing the applicability of a policy exclusion as an affirmative defense. *Continental Ins. Co. v. Louis Marx & Co., Inc.*, 64 Ohio St.2d 399, 401 (1980).

{¶ 14} Here, there is no dispute that the policy between appellant and State Farm was in effect for the relevant time period and provided that State Farm would "insure for accidental direct physical loss to the property," except for an exclusion which stated it would not insure for loss to the property:

> either consisting of, or directly and immediately caused by, . . . freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing, while the dwelling is vacant, unoccupied or being constructed unless you have used reasonable care to: (1) maintain heat in the building; or (2) shut off the water supply and drain the system and appliances of water.

(*See* June 13, 2024 Jury Instructions at 11-12.)

{¶ 15} In its pre-trial statement, appellant offered the following as its theory of the case: "The Plaintiff contends that the claim arises from water damage sustained when water at the Property was turned on, which then allowed water to flow through a broken pipe causing the damages to the Property . . . ." (Oct. 23, 2023 Pl.'s Pre-trial Statement at 2.) Appellant explained further:

> The Plaintiff contends that someone without the permission of the Plaintiff restored the water service. The Plaintiff contends that the unseasonably warm weather between the fall of 2019, and the date of loss supports the Plaintiff's position that the loss at issue arose from a restoration of the water service, and not the position advanced by the Defendant that a pipe burst and caused the Property to flood.

(Oct. 23, 2023 Pl.'s Pre-trial Statement at 2-3.)

{¶ 16} At trial during a discussion between the trial court and counsel regarding the jury instructions and interrogatories, appellant's counsel stated, "[O]ur position is is [sic] that the water damage did not occur as a consequence of a pipe freezing. The water damage occurred as a consequence of somebody turning the water on, which then allowed water to flow through a pipe that had previously broken." (Tr. Vol. 3 at 364.) In another trial exchange, appellant's trial counsel explained as follows:

> THE MAGISTRATE: You're not claiming that the broken pipe caused the damage.
>
> [APPELLANT'S COUNSEL]: Right.
>
> THE MAGISTRATE: You're claiming that someone turning the water on caused the damage.
>
> [APPELLANT'S COUNSEL]: Right.
>
> THE MAGISTRATE: So we don't get to the exclusion.
>
> [APPELLANT'S COUNSEL]: Right.
>
> THE MAGISTRATE: Would you agree?
>
> [APPELLANT'S COUNSEL]: I agree with that.

(Tr. Vol. 3 at 502.)

{¶ 17} After further discussion, appellant's counsel explained:

> So I think the first step is, . . . if the jury decides that the damages resulted from the turning on of the water, okay, then there's basically a determination for the - - for the plaintiff.
>
> If the . . . jury decides that the water was on and the pipe broke and you had this immediate flow of water, then the jury still has to determine . . ., you know, has State Farm, you know, proven the application of that exclusion . . .

(Tr. Vol. 3 at 512-13.)

The magistrate then asked counsel to submit proposed language for the interrogatories.

{¶ 18} Ultimately, the trial court permitted appellant to present alternative theories and explained in the jury instructions as follows:

> Plaintiff has two alternative theories regarding a covered loss. First, Plaintiff . . . claims that the loss to its property was directly and immediately caused by someone turning on the water in 190 E. 15th Avenue, not by the immediate discharge, leakage or overflow of water caused by a frozen water pipe. Alternatively, Plaintiff . . . claims that the loss to its property

> was directly and immediately caused by the immediate discharge, leakage or overflow of water caused by a frozen water pipe, but the loss was covered under the insurance policy because the exclusion did not apply.

(June 13, 2024 Jury Instructions at 2.)

{¶ 19} The jury answered two interrogatories corresponding to these instructions to reach its verdict. Jury Interrogatory No. 1 asked:

> Did Plaintiff 190 E. 15th Avenue, LLC prove by the greater weight of the evidence that it had a covered loss under the insurance contract issued by Defendant that was caused by someone turning on the water in 190 E. 15th Avenue and that Defendant State Farm Fire & Casualty Company breached the insurance contract?

To this question, the jury answered "no." The interrogatory form further stated that if the answer was "no," the jury was to proceed to Interrogatory No. 2. Appellant has not challenged the jury's response to Interrogatory No. 1.

{¶ 20} Jury Interrogatory No. 2 asked:

> Did Plaintiff 190 E. 15th Avenue, LLC prove by the greater weight of the evidence that it had a covered loss under the insurance contract issued by Defendant that was caused by the discharge, leakage or overflow of water caused by a frozen water pipe?

To this question, the jury answered, "no." The interrogatory form instructed that if the answer was "no," the jury was to sign the verdict in favor of State Farm.[1]

{¶ 21} In its appeal brief, appellant argues that the evidence in the record required the jury to answer "yes" to Interrogatory No. 2. After a review of the evidence admitted at trial, however, we agree with the trial court's conclusion that reasonable minds could conclude from the record that appellant did not meet its burden here. As the trial court pointed out, Interrogatory No. 2 specifically asked the jury to make a factual determination about what caused the water to flow through the broken pipe. As noted above, appellant's primary theory was that the water service had been restored without its knowledge. Perhaps to avoid the application of the insurance policy exclusion, appellant offered

[1] If the answer to Interrogatory No. 2 had been "yes," the form instructed the jury to proceed to Interrogatory No. 3 which asked whether State Farm had proved that appellant's loss was excluded under the insurance policy for its failure to exercise reasonable care in maintaining heat in the building or to shut off the water supply and drain the system to prevent damage from freezing.

evidence that could have been seen as disproving the existence of a frozen pipe. For example, Ocanas testified that he had winterized the property. And Ocanas and Beatley both testified that the heat was on at the property. No evidence was presented regarding how the break in the pipe had occurred.

{¶ 22} Even if it is *possible* that appellant's property damage was caused by water flowing through a pipe that had broken due to freezing, the jury was asked in Interrogatory No. 2 to determine whether appellant had *proved by the greater weight of the evidence* whether that was the specific cause of the property damage here. Based on the foregoing, we cannot say that the evidence in this case weighs so heavily in appellant's favor that the jury's verdict resulted in a manifest miscarriage of justice. Accordingly, we do not find that the jury's answer to Interrogatory No. 2 is against the manifest weight of the evidence. Therefore, we overrule the first assignment of error.

{¶ 23} In the second assignment of error, appellant argues the verdict was error because State Farm failed to introduce sufficient evidence to support the jury's verdict. More specifically, appellant explained, it "presents this conditional assignment of error to illustrate that the Appellee-Insurer failed to introduce and failed to meet its burden of proof upon sufficient evidence to support an application of the exclusion as asserted by the Appellee-Insurer." (Appellant's Brief at 53.)

{¶ 24} Appellant has conceded that this assignment of error is relevant only if the first assignment of error is sustained because it relates to the insurer's burden to prove an exclusion to coverage. We agree with appellant that, based on our resolution of the first assignment of error, appellant's second assignment of error is rendered moot. There is no need to determine whether State Farm proved an exclusion if appellant did not first prove a covered loss. Therefore, the second assignment of error is dismissed as moot.

IV. Conclusion

{¶ 25} For the foregoing reasons, we overrule the first assignment of error and dismiss the second assignment of error as moot. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BEATTY BLUNT and JAMISON, JJ., concur.