

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1320**

Shelley Lynn Yocom,
Appellant,

vs.

RAM Mutual Insurance Company,
Respondent.

**Filed April 15, 2019
Affirmed
Bjorkman, Judge**

Goodhue County District Court
File No. 25-CV-17-3215

Thomas R. Braun, Dominique J. Navarro, Brenton M. Tunis, Restovich Braun & Associates, Rochester, Minnesota (for appellant)

Scott V. Kelley, Daniel J. Bellig, Farrish Johnson Law Office, Chtd., Mankato, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges summary judgment declaring respondent homeowner's insurer is not obligated to indemnify its insured for injuries appellant sustained when the insured struck her with a golf cart at a motocross racetrack. We affirm.

FACTS

Appellant Shelley Lynn Yocom was injured while watching a motocross race at Midway Recreation Park when she was struck from behind by a golf cart driven by Jamey Swanson. The property on which the raceway is located is jointly owned by Jack and Cynthia Stamschror, who also serve as officers of the raceway corporation. In addition to the raceway, there is a home on the Stamschrors' 40-acre property.

At the time of the accident, Swanson had homeowner's insurance with respondent RAM Mutual Insurance Company. The policy's Incidental Liability Coverages include:

Motorized Vehicle Coverage. We pay for the **bodily injury** or **property damage** which:

- a. occurs on the **insured premises** and is a result of the ownership, operation, maintenance, use, loading or unloading of:
 - (1) a **motorized vehicle** if it is not subject to **motor vehicle** registration because of its type or use; or
 - (2) a **recreational motor vehicle**.

The policy defines "insured premises" to include "that part of residential premises not owned by an insured while temporarily used by an insured." "Recreational motor vehicle" is defined as "a motorized vehicle . . . , trailer or attached apparatus designed or used for recreation, vacation or leisure-time activities."

Following the accident, Yocom sued Swanson, the Stamschrors, Midway Recreation Park, Inc., and the entity that leased Midway Recreation Park for the race. Yocom alleged various acts of negligence with regard to use, maintenance, and oversight of the raceway. She settled her claims against Swanson for his \$300,000 liability limit

pursuant to a *Miller-Shugart* agreement.¹ She then commenced this action to recover that amount from RAM Mutual.

Both parties moved for summary judgment on the issue whether the policy affords coverage to Swanson. In support of her motion, Yocom submitted a 2013 county property tax statement showing the Stamschrors' property is classified as agricultural homestead and residential homestead for tax purposes.

The district court determined that the policy does not provide incidental-liability coverage because Midway Recreation Park is not a “residential premises . . . used by the insured.”² Accordingly, the district court granted summary judgment to RAM Mutual. Yocom appeals.

DECISION

Summary judgment must be granted when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. Where the parties do not dispute the material facts, we review de novo whether summary judgment is proper. *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn.

¹ “In a *Miller-Shugart* settlement, the insured, having been denied any coverage for a claim, agrees claimant may enter judgment against him for a sum collectible only from the insurance policy. To be binding on the insurer if policy coverage is found to exist, the settlement amount must be reasonable.” *Alton M. Johnson Co. v. M.A.I. Co.*, 463 N.W.2d 277, 278 n.1 (Minn. 1990).

² The district court also ruled that there was no coverage under the policy's general personal-liability provisions because Swanson's golf cart is a “motorized vehicle” and therefore subject to an exclusion that does not apply to incidental-liability coverage. Yocom does not challenge that determination in this appeal.

2016). Typically, on cross-motions for summary judgment, “the parties implicitly, if not actually, agree that there is no dispute as to the material facts.” *Id.* at 821.

“The interpretation of an insurance policy is a question of law as applied to the facts presented.” *Star Windshield Repair, Inc. v. W. Nat’l Ins. Co.*, 768 N.W.2d 346, 348 (Minn. 2009). Insurance policies, like other contracts, are governed by the language used, which is “given its usual and accepted meaning.” *Glass Serv. Co. v. Progressive Specialty Ins. Co.*, 603 N.W.2d 849, 851 (Minn. App. 2000) (quotation omitted); see *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012) (stating that generally a court “construe[s] contract terms consistent with their plain, ordinary, and popular sense, so as to give effect to the intention of the parties as it appears from the entire contract” (quotation omitted)). Because insurers draft insurance policies, any ambiguity is construed in favor of the insured, “but the court has no right to read an ambiguity into plain language of an insurance policy in order to construe it against the one who prepared the contract.” *Bobich v. Oja*, 104 N.W.2d 19, 24 (Minn. 1960).

Yocom essentially makes two arguments on appeal. First, she asserts that the district court erred by interpreting “residential premises” to exclude the property on which she was injured. Second, she contends that the district court erred by “ignoring” evidence that the county classified the entire property as residential. We address each argument in turn.

I. The accident did not occur on “residential premises.”

It is undisputed that the golf cart Swanson was driving at the time of the accident is a “recreational motor vehicle” for purposes of incidental-liability coverage. Accordingly,

the sole coverage issue is whether Swanson was operating the golf cart on “that part of residential premises not owned by an insured while temporarily used by an insured.”

The policy does not define “residential premises.” But it defines “residence” as “a building used principally for family residential purposes.” And we may look to dictionary definitions to determine a word’s plain meaning. *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). “Residence” is defined as “[t]he place in which one lives; a dwelling.” *The American Heritage Dictionary of the English Language* 1493 (5th ed. 2011). “Premises” means “[l]and, the buildings on it, or both the land and buildings on it.” *Id.* at 1390. When read together, “residential premises” refers to a building in which someone lives.

This interpretation is consistent with the policy’s general definition of “insured premises.” *See Quade*, 814 N.W.2d at 705 (stating that terms of an insurance policy must be read in context of the entire policy). The policy generally defines “insured premises” as “the **residence** shown on the declarations as the described location” and “related private structures and grounds at that location.” The incidental liability coverages extend this definition to residential premises owned by someone other than the insured, but do not alter the general “insured premises” definition. In other words, the policy contemplates coverage for injuries that occur at private family homes.

Applying this meaning of “residential premises,” we can only conclude that Swanson is not entitled to incidental liability coverage in connection with this accident. Yocom provides no evidence that the area Swanson was using—the raceway—was “part of residential premises.” She does not allege that the raceway area was residential in

nature; the accident occurred while she and Swanson were attending a public motocross event. She offers no evidence that any person actually lived at the house located on the 40-acre property or the house's proximity to the raceway. And in all of her submissions to the district court, Yocom fails to even suggest that Swanson used the property for residential purposes.³ On this record, we conclude that the policy does not cover Yocom's injuries.⁴

II. County tax records do not create genuine issues of material fact.

Yocom urges us to treat county tax records as conclusive evidence that her injuries occurred while Swanson was temporarily using another's residential premises. Alternatively, she asserts these records create a fact issue precluding summary judgment. We are not persuaded. First, Yocom cites no legal authority to support her contention that county tax classifications govern whether an incident occurred on "residential premises" under a homeowner's insurance policy. *Cf. Landmark Cmty. Bank, N.A. v. Klingelhutz*, ___ N.W.2d ___, ___, No. A18-0755, slip op. at 13 (Minn. App. Apr. 15, 2019) (stating that tax-assessed value of property is not presumed valid in dispute between private

³ Yocom argues that this court should rely on *Hingham Mut. Fire Ins. Co. v. Barrett*, an unpublished opinion issued by the Superior Court of Massachusetts. 2010 WL 5827588 (Mass. Supp. 2010). Unpublished authority from another state is not controlling in Minnesota. And that case involved an insured who was in the process of purchasing and preparing the property for residential use and the insurance contract included liability coverage for such property. Swanson had no residential connection to the property where the accident occurred.

⁴ Yocom asserts that "the district court erred in not finding ambiguity in the [policy] definition of 'insured premises.'" Neither party raised the issue of ambiguity in the district court, and the court did not address it. As a reviewing court, we "generally consider[] only those issues presented to and decided by the trial court." *Polaris Indus., L.P. v. Continental Ins. Co.*, 539 N.W.2d 619, 623 (Minn. App. 1995), *review denied* (Minn. Jan. 25, 1996). Accordingly, we do not consider the ambiguity argument.

parties). Second, we discern no dispute of material facts. The county records indicate that the Stamschrors' 40-acre property is classified as agricultural homestead and residential homestead for tax purposes. They do not purport to describe how any part of the property is actually used, let alone the raceway portion where the public motocross event took place. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) (“[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.”); *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976) (defining “material fact” as one that is determinative to resolution of the case).

The undisputed material facts show Swanson and Yocom were both at the raceway, for a public motocross race, when the accident occurred. There is no evidence that either party was at or near a house. And even if we credit Yocom’s argument that a property can simultaneously be used for both residential and non-residential purposes, she offers no evidence of such use by the Stamschrors. In sum, RAM Mutual’s policy does not cover Yocom’s claims against Swanson.

Affirmed.