IN THE COURT OF APPEALS OF IOWA

No. 8-338 / 07-1580
Filed October 1, 2008

CECELIA LEE TAYLOR,
Plaintiff-Appellant,

vs.

FARM BUREAU MUTUAL INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Duane E. Hoffmeyer, Judge.

A homeowner appeals following a jury verdict and judgment entry in favor of an insurance company in her declaratory judgment action. **AFFIRMED.**

Shelley A. Goff, Ruston, Louisiana, for appellant.

Michael W. Ellwanger of Rawlings, Nieland, Killinger, Ellwanger, Jacobs, Mohrhauser, Nelson & Early, Sioux City, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

DOYLE, J.

Cecelia Taylor appeals following a jury verdict and judgment entry in favor of Farm Bureau Mutual Insurance Company in her declaratory judgment action. We affirm.

I. Background Facts and Proceedings

On February 16, 2003, Taylor was vacationing in Florida when she received a telephone call from her son informing her that the lower levels of the two-and-a-half-story home she owned in Sioux City, Iowa, had flooded. It appears the heating system for the home malfunctioned while Taylor was in Florida. The lack of heat in the home caused the water pipes in the master bathroom on the second floor of the house to burst. The water from the broken pipes flowed down from the second floor through the first floor and into the basement.

Taylor had lived in the house, which was built in the 1920s, for approximately forty years. It was filled with a number of antiques and collectibles that she had accumulated over the years. The house was insured by Farm Bureau. The insurance policy provided dwelling coverage in the amount of $251,000 and personal property coverage in the amount of $175,700.

Taylor's son reported the loss to Farm Bureau on February 18, 2003. A claims adjustor for the insurance company inspected the damage to the house the following day. He had arranged for a professional water remediation company to begin removing the water and cleaning the property, but Taylor did not want to use the company suggested by Farm Bureau. The adjustor inspected the property again on February 21, and observed that Taylor had yet to

begin the clean-up process. The insurance company advised her that she needed to start that process as soon as possible in order to prevent the growth and spread of mold. By February 25 Taylor had moved some of her furniture to a storage facility and had started to remove the carpet in the house. However, she considered the house to be a "total loss" and did not return to live in it.

Brian Larsen, an adjustor for Farm Bureau specializing in large property claims, inspected Taylor's property on several occasions in February, March, April, and May 2003. He observed multiple areas in the house that indicated it was in a state of disrepair prior to the pipes bursting in February 2003. There were old water stains on the ceilings and walls throughout the entire house. A set of pocket doors on the main floor of the home were rotted through. The ceiling in the master bedroom on the second floor was cracked and missing chunks of plaster. It was being held up by a PVC pipe and a two-by-four piece of wood. The ceiling over the sunroom on the second floor of the house had completely collapsed in 2001 or 2002, but it had not been repaired as of February 2003. The ceiling in the attic was also starting to collapse. There were holes in the roof of the house, and a portion of the attic was exposed to the outside.

Taylor submitted a proof of loss to Farm Bureau in May 2003, which claimed losses in excess of her policy limits. All of the personal property listed on this proof of loss had been located on the first floor and basement of the home. Farm Bureau was unable to reach an agreement with Taylor regarding the cost to repair her home or the value of the personal property she listed on that proof of loss. The insurance company consequently notified Taylor in

August 2003 that it was invoking the appraisal process set forth in her insurance policy, which provided:

> If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Taylor, however, did not cooperate with the appraisal process. She instead filed a petition against Farm Bureau in February 2004, seeking a declaratory judgment[1] awarding her the policy limits for her dwelling and personal property less any payments previously made by Farm Bureau.[2] She also submitted a second proof of loss to Farm Bureau in June 2004, claiming personal property that had been located on the second floor and attic of her home was damaged due to "mold infestation." This property had been left in the vacant house, which was vandalized on several occasions, since February 2003. Farm Bureau filed an answer and counterclaim, requesting the court to order Taylor to proceed with the appraisal process as required by the terms of her insurance policy.

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[1] She also alleged a breach of contract claim premised on Iowa Code section 507B.4 (2003), which was dismissed by the district court in a summary judgment ruling. Taylor does not raise the court's dismissal of that claim as an issue on appeal.

[2] At that point in time, Farm Bureau had paid Taylor approximately $211,890.96 for dwelling repairs and $31,290 for the personal property listed in the May 2003 proof of loss.

Taylor filed a motion to dismiss Farm Bureau's counterclaim, arguing the appraisal provision in the policy was invalid and unenforceable. The district court denied Taylor's motion, ordered the parties to proceed with the appraisal process, and stayed the district court proceedings until completion of that process. The parties, however, were unable to agree upon an umpire. The district court accordingly appointed an umpire for them upon motion by Farm Bureau. The umpire directed the parties to retain appraisers and submit their appraisers' reports to him for determination of the amount of loss.

Taylor retained two appraisers: Paul Downing and David Bauerly. Downing determined that the fair market value of the dwelling prior to the incident in February 2003 was $180,000. Bauerly examined the personal property listed in Taylor's second proof of loss. He determined the total value of those items was $293,880.[3] Farm Bureau also retained two appraisers: Ron Leuwerke and Randy Roovaart. Leuwerke inspected Taylor's house in November 2003 and determined it would cost $200,000 to repair it. Roovaart appraised the personal property listed in Taylor's first and second proofs of loss. He determined it would cost $31,290 to repair the items listed in the first proof of loss and $69,960 to repair the items listed in the second proof of loss.

Because the appraisers were not able to agree on the amount of loss, the umpire, at the request of the parties, scheduled a hearing "to resolve disagreements about the appraised values established by each party." Following the appraisal hearing in November 2005, at which the parties presented witnesses and evidence, the umpire submitted his appraisal award. The umpire

[3] Some of Bauerly's values were based on cost of repair while others were based on actual cash value.

found the items Taylor listed in her second proof of loss "were not damaged during the February, 2003 incident." He further found that "Taylor suffered a hole in her attic roof and other roof leakages that caused extensive preexisting and post incident water damage to the attic and second floor structure of the house." Despite those findings, the umpire stated that "[i]n making his determinations of value, [he] . . . made no attempt to distinguish between the pre-accident condition of the property and the damage incurred in February, 2003." He further stated "values have also been determined for those items which, in the opinion of the undersigned, are not related to the loss."

Based upon the parties' stipulation at the hearing, the umpire determined the fair market value of the house was $180,000 and the cost of repair was $200,000. He adopted Roovaart's appraisal of the personal property listed in the first proof of loss because Taylor did not submit a competing appraisal report for that property. The umpire also adopted Roovaart's appraisal of the personal property listed in the second proof of loss.

After the umpire issued his appraisal award, Farm Bureau filed a motion for summary judgment in the district court proceedings, requesting in relevant part that the court adopt the umpire's appraisal award and allow the parties to proceed to trial on the issue of causation. The district court lifted the stay and adopted the umpire's findings on valuation. But, the court determined that "[a]ny discussion of facts and/or causation in the [umpire's] report shall be . . . disregarded."

At the pretrial conference, the parties informed the district court that they had reached a resolution as to all but eleven items of personal property that were

listed in the June 2004 proof of loss.[4] Taylor acknowledged that she was "stuck with the value that the umpire put on these items of property." Farm Bureau, however, argued that it should be allowed to present evidence that these items were not damaged when the pipes broke in February 2003 based on the state of the house prior to that time and Taylor's own negligence in failing to protect the property from further damage after the pipes broke. Farm Bureau also claimed it was entitled to a setoff for the amount it overpaid Taylor for her dwelling.

Prior to the trial, Taylor filed a motion in limine seeking an order from the district court prohibiting Farm Bureau from presenting evidence regarding her alleged negligence and its setoff claim. The district court determined Farm Bureau should be allowed to "present evidence of the total payments," as "more of a cursory matter" because the parties had agreed the court itself would address the setoff issue after the trial. The court further determined that Farm Bureau would be allowed to present evidence that the disputed items of personal property were not damaged in February 2003 due to "other preexisting causes of moisture and humidity" in the home.

Following the close of evidence, the jury determined in response to a special verdict form that the eleven items of personal property did suffer water damage as a result of the February 2003 water incident. The jury further determined that the water damage to all but one of those items was the result of Taylor's neglect. It then awarded Taylor less than what the umpire determined

[4] They agreed that Taylor was entitled to $180,000 for the damage to her house, although Farm Bureau had previously paid her $211,890.96 for dwelling repairs. They further agreed that the personal property listed in the May 2003 proof of loss had been damaged in the February 2003 incident in the amount determined by the umpire, which had also already been paid by Farm Bureau.

each item of personal property was worth. The district court thereafter entered judgment in favor of Taylor in the amount of $15,594.25.

Following the jury verdict and judgment entry, Farm Bureau filed a motion to adjust the verdict and award a setoff. Taylor resisted Farm Bureau's motion and filed a motion for new trial. The district court granted Farm Bureau's request for a setoff for the amount it overpaid Taylor on her dwelling and denied Taylor's motion for new trial.

Taylor appeals and raises the following issues:

I. The district court erred in allowing an arbitration when the policy only provided for an appraisal.

II. The district court erred in adopting the umpire's findings when it was clear the umpire acted as an arbitrator rather than an umpire in an appraisal process.

III. The district court erred in precluding Taylor from presenting evidence of damage greater than that found by the umpire.

IV. The district court erred in instructing the jury it could value the loss below that awarded by [the] umpire.

V. The district court erred in granting a set off of the jury verdict.

II. Scope and Standards of Review

Our review of actions for declaratory judgment depends upon how the action was tried to the district court. *Passehl Estate v. Passehl*, 712 N.W.2d 408, 414 (Iowa 2006). Whether a declaratory judgment action is considered legal or equitable in nature is determined by the pleadings, the relief sought, and the nature of the case. *Gray v. Osborn*, 739 N.W.2d 855, 860 (Iowa 2007). Both parties contend our review should be for the correction of errors at law because the case was filed and tried as a law action. We agree. *See* Iowa R. App. P. 6.4; *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). The

district court's findings of fact are therefore binding upon us if those facts are supported by substantial evidence. Iowa R. App. 6.14(6)(*a*). The court's legal conclusions, however, are not. *Tim O'Neill Chevrolet*, 551 N.W.2d at 614.

III. Discussion

A. Appraisal Process

"An appraisal is a supplementary arrangement to arrive at a resolution of a dispute without a formal lawsuit." *Central Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 466 N.W.2d 257, 260 (Iowa 1991). An appraisal provision in an insurance policy is valid and binding on the parties. *Id.* However, appraisal awards do not constitute a formal judgment and may be set aside by a court. *Id.* "When reviewed, the award is supported by every reasonable presumption and will be sustained even if the court disagrees with the result." *Id.* "The award will not be set aside unless the complaining party shows fraud, mistake or misfeasance on the part of an appraiser or umpire." *Id.*

Taylor appears to be claiming the district court erred in adopting the umpire's appraisal award in this case because the umpire conducted the proceedings as an arbitration rather than an appraisal. She argues that because the umpire "followed the arbitration model," the proceedings violated Iowa Code section 679A.1(2)(a). *See Mutual Serv. Cas. Ins. Co. v. Iowa Dist. Court*, 372 N.W.2d 261, 264 (Iowa 1985) (holding an arbitration provision in an insurance policy was unenforceable under section 679A.1(2)(a) because it was contained in a contract of adhesion and was an agreement to arbitrate a future controversy). We do not agree.

There is a difference between "appraisal" and "arbitration." *Minot Town & Country v. Fireman's Fund Ins. Co.*, 587 N.W.2d 189, 190 (N.D. 1998). While both proceedings are designed to effect speedy and efficient resolutions in lieu of judicial proceedings, arbitration will generally decide an entire controversy. *Id.*; *see also State v. Public Employment Relations Bd.*, 744 N.W.2d 357, 362 (Iowa 2008); *Central Life Ins. Co.*, 466 N.W.2d at 260. An appraisal, on the other hand, establishes only the amount of a loss and not liability for the loss under the insurance policy. *See Terra Indus., Inc. v. Commonwealth Ins. Co. of Am.*, 981 F.Supp. 581, 607 (N.D. Iowa 1997) (determining appraisal provision required the appraisers to ascertain the amount of loss, not legal questions of coverage); *Vincent v. German Ins. Co.*, 120 Iowa 272, 278, 94 N.W. 458, 460 (1903) ("To appraise is to estimate value . . . .").

Arbitrations are governed by Iowa Code chapter 679A. There is no corresponding statute governing appraisal proceedings. Section 679A.1(2)(a), which states an agreement to arbitrate a future controversy contained in a contract of adhesion is invalid and unenforceable, is simply not applicable to appraisal agreements. This is especially so in light of our supreme court's statement in *Central Life Insurance Co.* that "[p]rovisions for appraisal of an insurance loss, whether under policy terms or pursuant to independent agreement, are valid and binding on the parties." 466 N.W.2d at 260.

Furthermore, we do not believe the umpire's receipt of testimony and evidence in this case converted the appraisal proceeding into an arbitration, as Taylor argues. *See Vincent*, 120 Iowa at 278-79, 94 N.W. at 460 (stating although appraisers were not required to hear evidence under terms of appraisal

agreement, they are not prevented from doing so). The scope and conduct of an appraisal proceeding is determined by the language of the appraisal agreement. *See Terra Indus.*, 981 F.Supp. at 607. The appraisal provision at issue here did not prohibit the umpire from hearing testimony and receiving evidence. Moreover, the parties agreed the appraisal process should proceed in such a manner.

Finally, we reject Taylor's argument that the umpire's statements regarding his opinion as to Farm Bureau's liability for her loss is a sufficient basis for setting aside the appraisal award. While such findings may have been outside the scope of the appraisal process in this case, the umpire stated he "made no attempt to distinguish between the pre-accident condition of the property and the damage incurred in February, 2003" in making his determinations of value. He placed values on all of the items of personal property Taylor claimed were damaged as a result of the incident in February 2003, even "those items which, in the opinion of the undersigned, are not related to the loss." In addition, in adopting the umpire's appraisal award, the district court specifically stated that "[a]ny discussion of facts and/or causation in the report shall be . . . disregarded." Thus, the umpire's appraisal award was confined to its proper scope in the district court proceedings. *See First Nat'l Bank v. Clay*, 231 Iowa 703, 715, 2 N.W.2d 85, 91 (1942) ("[A] party complaining of an award must make out the mistake clearly and fully, and also show that, but for such mistake, the result would have been different."). We therefore reject Taylor's claims regarding the validity of the appraisal process and award.

B. Evidentiary Ruling

Taylor next claims the district court erred in preventing her from "presenting evidence of damage greater than that found by the umpire." She argues that the court's decision prohibiting her from attacking the umpire's valuations but allowing Farm Bureau to do so "was patently unfair and an abuse of discretion." We conclude otherwise.

We first note that Taylor did not cite any authority in support of this claim. *See* Iowa R. App. P. 6.14(1)(*c*) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."). Furthermore, trial courts are granted broad discretion concerning the admissibility of evidence. *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 149 (Iowa 2002). An abuse of discretion occurs when the court exercises its discretion on "grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). Taylor has not established such an abuse of discretion here.

The appraisal provision in this case provided that if the parties' appraisers failed to agree as to the amount of loss, "they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss." The umpire agreed with and adopted the amount of loss set forth in the personal property appraisal completed by Farm Bureau's appraiser. Thus, pursuant to the terms of the appraisal provision, the umpire's ensuing appraisal award "set the amount of loss." Farm Bureau was then free to litigate, as it did, the general question of its liability for that loss in the district court proceedings. *See George Dee & Sons Co. v. Key City Fire Ins. Co.*, 104 Iowa at 167, 172, 73 N.W. 594,

595 (1897) (stating that after a determination of the amount of loss in an appraisal proceeding, it is then left "to be determined by the parties, or by litigation, the question as to whether or not th[o]se articles of property were really embraced within the provisions of the policy"). It did not, as suggested by Taylor, present evidence that the eleven items of personal property listed in the June 2004 proof of loss should be valued at an amount lower than that found by the umpire.

For the foregoing reasons, we find no abuse of discretion in the district court's refusal to allow Taylor to relitigate the issue of the amount of loss to her personal property. We must next address whether the district court erred in instructing the jury that it could value her loss below that awarded by the umpire.

C. Jury Instruction

Over Taylor's objection, the district court submitted Instruction No. 20 to the jury, which stated,

> If you find that the February 16, 2003, water incident caused water damage to Cecelia Taylor's property, you then must determine the amount of damage that has resulted from this incident. The amount of damage that Cecelia Taylor can recover is the amount necessary to repair the water damage caused in the incident of February 16, 2003, so that the property is in the same condition that it was in immediately before the water incident.
>
> The umpire's amount, as shown in Instruction #21, is the most that you can award to Cecelia Taylor. You must only award the amount of damage proximately caused by the water incident. You may award less than these amounts depending on the evidence.

Taylor claims the court erred in so instructing the jury because "neglect and failure to mitigate were not [pled] and therefore . . . the jury should not have been

instructed to consider any amount other than that awarded by the umpire."[5] We reject this assignment of error.

We review claims that the district court erred in submitting a jury instruction for the correction of legal errors. *Greenwood v. Mitchell*, 621 N.W.2d 200, 204 (Iowa 2001). Courts must give a requested jury instruction when it states a correct rule of law having application to the facts of the case and when the concept is not otherwise embodied in other instructions. *Herbst v. State*, 616 N.W.2d 582, 585 (Iowa 2000). "Parties to lawsuits are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record." *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). Taylor argues that Farm Bureau was not entitled to have its defense of neglect submitted to the jury because that defense is an affirmative defense that is waived if not pled.

"The rule is clear that special limitations or exclusions on the right to recover under a policy inserted in the policy after the general insurance clause, are affirmative defenses which must be pleaded and established by the insurer." *Stortenbecker v. Pottawattamie Mut. Ins. Ass'n*, 191 N.W.2d 709, 711 (Iowa 1971). An insured's neglect in failing to "use all reasonable means to save and

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[5] We note that the jury was also instructed in Instruction No. 1 that "Farm Bureau also contends that any damage to the property was the result of neglect by Mrs. Taylor." The defense of neglect was explained in Instruction Nos. 18 and 19. Instruction No. 18 stated,

> [t]he insurance policy of Farm Bureau requires that after the water incident in February 2003, Cecelia Taylor, the insured, must protect the property from further damage. If repairs to the property are required, she is required to make reasonable and necessary repairs to protect the property.

Instruction No. 19 defined neglect. Taylor, however, does not challenge these jury instructions. Nor does she challenge the special verdict form, which requested the jury to determine whether the water damage was the result of her neglect.

preserve property at and after the time of a loss" is listed after the general insurance clause in Taylor's policy as an exclusion on her right to recover.[6] Thus, it appears Taylor is correct that Farm Bureau was required to specifically plead its affirmative defense of neglect, which it did not do in its answer and counterclaim.

"Failure to plead an affirmative defense normally results in waiver of the defense, unless the issue is tried with the consent of the parties." *Dutcher v. Randall Foods*, 546 N.W.2d 889, 893 (Iowa 1996). Farm Bureau does not contend the issue of Taylor's neglect was tried with her consent. It does, however, argue that Taylor was not prejudiced by its failure to affirmatively plead the defense of neglect because it "was an issue that was in the case from the very beginning." We agree.

The rationale for the affirmative defense waiver rule is founded on the idea that certain defenses are required to be raised as affirmative defenses while others are not. *Smith v. State*, 646 N.W.2d 412, 416 (Iowa 2002) (Cady, J. dissenting). An affirmative defense is defined as one that rests on facts not necessary to support the plaintiff's case. *Id*. A fair trial therefore requires a defendant to give notice to a plaintiff of a defense to a claim not associated with proof of the claim so the plaintiff will be able to present evidence at trial to overcome the defense. *Id*. The waiver requirement comes from the delay in asserting the affirmative defense until the plaintiff has tried the case, not from the procedural requirement of raising it in a pleading. *Id.* This explains why the

[6] Her insurance policy also provides that her coverage is limited by her duty to "[p]rotect the property from further damage. If repairs to the property are required," she must "[m]ake reasonable and necessary repairs to protect the property."

waiver rule does not apply when the underlying issue is tried by the consent of the parties. *Id.* It is also consistent with our courts' liberal approach to allowing amendments to pleadings, even during trial. *Id.*

Farm Bureau first raised the issue of neglect in the appraisal proceedings where it presented evidence regarding the state of Taylor's house prior to February 2003 in addition to evidence regarding her alleged failure to remediate the water damage to the house within a reasonable period of time after the loss. It again mentioned the issue in its summary judgment motion, stating "[t]he problem with [the] items" listed in Taylor's second proof of loss "is that the 'cause of damage' is contested." *See McElroy v. State*, 637 N.W.2d 488, 497 (Iowa 2001) (stating a defendant may first raise an affirmative defense in a motion for summary judgment as long as the plaintiff is not prejudiced). Farm Bureau explained at the pretrial conference that, based upon the terms of Taylor's insurance policy, an issue in the case would be whether the property was damaged due to her own neglect, which it felt bore on the question of causation.

Following the pretrial conference, Taylor filed a motion in limine seeking to prevent Farm Bureau from presenting evidence regarding her alleged negligence. Farm Bureau resisted that motion, specifically citing the applicable provisions in the insurance policy it claimed exempted it from liability for Taylor's claimed loss. The parties again presented arguments concerning the neglect issue to the district court on the morning of the trial. The court allowed Farm Bureau to present evidence at trial regarding the condition of Taylor's house before February 2003 and her alleged neglect in protecting her personal property after that point in time. Taylor was likewise allowed to present evidence as to the

condition of her home and personal property before her loss and her efforts thereafter to ameliorate that loss.

In light of the foregoing, we cannot conclude Taylor was prejudiced by the jury's consideration of the neglect issue or by the district court's submission of Instruction No. 20 to the jury. *See id.* at 496-97 (discerning no prejudice to plaintiff in defendants' failure to raise affirmative defense in their answer because the defense was litigated in pretrial proceedings); *Herbst*, 616 N.W.2d at 585 (stating error in giving a jury instruction does not warrant reversal unless the error is prejudicial to the party). We believe our decision in this regard furthers the "underlying principle of our rules of civil procedure that the justice system favors deciding a case on its merits rather than on procedural grounds." *McElroy*, 637 N.W.2d at 498.

D. Setoff

Following the jury verdict and judgment entry in favor of Taylor, Farm Bureau filed a motion to adjust the verdict and award a setoff. In support of its motion, Farm Bureau asserted that Taylor had been paid $211,890.96 for dwelling repairs. However, the parties later stipulated that the fair market value of the house was $180,000. Farm Bureau accordingly sought to have the judgment against it offset in the amount of $31,890.96. The district court granted Farm Bureau's motion. Taylor claims the court erred in doing so because Farm Bureau did not seek such relief in its answer and counterclaim, the parties did not agree to a setoff, and there is no statute requiring a setoff.

Setoff is traditionally an equitable doctrine by which a court, upon petition of one party, may reduce or cancel the claim of an adverse party. *City of Sioux*

City v. Siouxland Eng'g Assocs., P.C., 611 N.W.2d 777, 779 (Iowa 2000); *Barnhouse v. Hawkeye St. Bank*, 406 N.W.2d 181, 188 (Iowa 1987). In Iowa, however, the right to a setoff is regulated through the rules of civil procedure, which have the force and effect of law. *City of Sioux City*, 611 N.W.2d at 779. Iowa Rule of Civil Procedure 1.957 provides that a "claim and counterclaim shall not be set off against each other, except by agreement of both parties or unless required by statute."

The parties here agreed prior to the trial that the district court should determine the setoff issue after the jury rendered its verdict in the case. Farm Bureau accordingly filed a post-trial motion seeking a credit for the amount it overpaid Taylor for her dwelling. Pursuant to the parties' agreement, the district court considered the issue and granted Farm Bureau's motion. We find no error in the court's decision in this regard.

IV. Conclusion

We reject Taylor's claims regarding the validity of the appraisal process and award and conclude the district court did not err in adopting the valuations contained in the umpire's appraisal award. We find no abuse of discretion in the court's refusal to allow Taylor to relitigate the issue of the amount of loss to her personal property. Nor did the court err in instructing the jury that it could value Taylor's loss below that awarded by the umpire. Finally, we conclude the court did not err in granting Farm Bureau's motion to adjust the verdict and award a setoff. We therefore affirm the judgment of the district court.

AFFIRMED.