

IN THE SUPREME COURT OF TEXAS

No. 19-0210

DELLA R. PERRY, PETITIONER,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS

PER CURIAM

At issue in this insurance dispute is whether an insurer's payment of an appraisal award bars an insured's claims under the Texas Prompt Payment of Claims Act (TPPCA), codified as Chapter 542 of the Insurance Code. The court of appeals concluded it did. Because the court of appeals' opinion is inconsistent with our recent decisions on this issue, we now reverse.

Della Perry's residential property sustained damage from a storm. After its inspection, United Services Automobile Association (USAA)—Perry's insurance provider—paid her the cash value of her claim, which amounted to \$5,153. Believing the property damage was undervalued, Perry sued USAA, asserting contractual and extra-contractual theories and invoking the insurance policy's appraisal clause.

The appraisers valued the damage at almost \$15,000. USAA paid Perry the balance of the award (\$9,335) and subsequently moved for summary judgment on all of her claims. First, USAA

argued that because it paid the appraisal award, Perry did not lack any benefits to which she was entitled under her insurance policy. Second, USAA asserted that because Perry’s claim for breach of contract failed, her Insurance Code and DTPA claims also failed as a matter of law. The trial court granted summary judgment for USAA, and the court of appeals affirmed, holding that Perry was barred from pursuing her extra-contractual claims as a matter of law because she received all her policy benefits. ___ S.W.3d ___, ___ (Tex. App.—Amarillo 2018). The court of appeals reasoned that once USAA paid the appraisal award, the injury Perry suffered was neither independent nor distinct from her contractual claims, and she was therefore prohibited from pursuing her statutory claims. *Id.* at ___.

Perry filed a petition asking this Court to review whether, in light of our opinion in *USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479 (Tex. 2018), an insurer’s timely payment of an appraisal award extinguishes an insured’s claims under the Texas Insurance Code.¹ Meanwhile, we decided two cases relevant to the issues Perry raises in her petition. In *Barbara Technologies Corp. v. State Farm Lloyds*, we held that “payment in accordance with an appraisal is neither an acknowledgment of liability nor a determination of liability under the policy for purposes of TPPCA damages under section 542.060.” 589 S.W.3d 806, 820 (Tex. 2019). On the same day, we restated in *Ortiz v. State Farm Lloyds* that “an insurer’s payment of an appraisal award does not as a matter of law bar an insured’s claims under the Prompt Payment Act.” 589 S.W.3d 127, 135 (Tex. 2019).

¹ Perry also raises the same constitutional issues in this Court that she raised in the court of appeals. As that court correctly noted, “[c]onstitutional complaints must be raised [in the trial court] or they are not persevered for appellate review.” ___ S.W.3d at ___ (citing *In re L.M.I.*, 119 S.W.3d 707, 711 (Tex. 2003)). Because Perry failed to preserve these issues, we decline to address them.

The court of appeals concluded that, as a matter of law, Perry could not maintain her TPPCA claim due to USAA's payment of the appraisal award. Under *Barbara Technologies* and *Ortiz*, this was error. Without hearing oral argument, *see* TEX. R. APP. P. 59.1, we reverse the judgment of the court of appeals and remand the case to the trial court to consider Perry's TPPCA claim in light of those decisions.²

OPINION DELIVERED: June 19, 2020

² To the extent Perry is also challenging the court of appeals' holding that her common-law and statutory bad faith claims under chapter 541 are barred, we affirm. "Because [Perry] seeks no actual damages other than the policy benefits paid in accordance with the policy's appraisal provision, [she] may not maintain a bad faith claim under either the common law or chapter 541." *Ortiz*, 589 S.W.3d at 135.