COURT OF APPEALS
DECISION
DATED AND RELEASED

AUGUST 27, 1996

NOTICE

No. 95-3256

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

FRANK F. ULLMAN and GAIL ULLMAN,

Plaintiffs-Respondents,

v.

NORRIN CORNELIUS, AUTO-OWNERS INSURANCE COMPANY, a foreign corporation, CHARLES KING and WENDY J. KING, his wife,

Defendants-Respondents,

LAKELAND MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

APPEAL from an order of the circuit court for Langlade County: JAMES P. JANSEN, Judge. *Reversed and cause remanded*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Lakeland Mutual Insurance Company appeals a trial court order that denied its motion for a declaratory judgment. Lakeland Mutual provided Charles and Wendy King liability coverage. Gail Ullman

suffered injuries as a passenger in a bus when it collided with two of the Kings' horses that had strayed onto a public highway. Lakeland Mutual sought a declaratory judgment that its policy's "horse exclusion" denied liability coverage for any damage caused by the Kings' horses. The trial court ruled that the horse exclusion did not apply to damage caused by a collision between horses and a motor vehicle, but only to damage caused by what may be called horses' active conduct, such as horse bites or kicks.

On appeal, Lakeland Mutual argues that the trial court disregarded the plain language of the exclusion. In response, the Kings, the Ullmans, and another liability insurer—hereinafter collectively called "respondents"—argue that the trial court correctly limited the horse exclusion, citing the fact that the policy contains no equivalent exclusion for the passive conduct of other animals that might stray onto a highway, such as cows, sheep, and pigs. They also argue that the policy's definition section made the horse exclusion ambiguous. They cite this ambiguity as an additional basis to uphold the trial court. We agree with Lakeland Mutual. We therefore reverse the declaratory judgment and remand the matter for further proceedings.

Respondents essentially argue that the horse exclusion does not deny coverage for damage caused by a horse's "passive conduct." Here, the horse exclusion denied liability coverage for horse caused damage, without qualification: "We do not cover claim(s) made or suit(s) brought against any insured for damages because of Bodily Injury or Property Damage caused by any horse owned by or in the care of any insured." By virtue of such terms, the policy denies coverage not only for damage caused by a horse kick or bite, but also when the horse wanders onto a road.

We also see no significance in the fact that the policy contained no exclusions for other animals, such as cows, sheep, and pigs. According to respondents, this showed that the horse exclusion did not apply when the horses wandered onto the highway. In respondents' view, if Lakeland Mutual had wanted the exclusion to apply to such conduct, it would have extended the exclusion to all animals whose similar conduct could bring about collisions with motor vehicles. Respondents apparently base this argument on the premise that cows, sheep, and pigs pose an equivalent risk of motor vehicle collision as horses. We need not inquire whether the risk of wandering is greater when horses are concerned. The language of the policy is unambiguous.

Last, we reject respondents' argument that the policy's definition section made the policy ambiguous. It defined "insureds" to include "[p]ersons using or caring for . . . animals owned by an insured and to which this insurance applies." Respondents theorize that this operated to provide full liability coverage to horse caretakers for damage caused by any horse to which the policy applied. Under their theory, the "insurance applied" to the Kings' horses by indemnifying the Kings for damage to their horses. Inasmuch as the "insurance applied" to the horses, the theory continues, and inasmuch as the definition of "insured" did not include the word "liability" between the words "this" and "insurance," the definition operated to award horse caretakers full liability coverage, including coverage for horse caused damage undiminished by the horse exclusion. This result, respondents maintain, made the policy internally contradictory and thereby ambiguous, by paradoxically granting additional insureds more liability coverage than named insureds.

We see no such ambiguity or contradiction. Insurance policies are ambiguous whenever they permit more than one construction. ***Smith v. Atlantic Mut. Ins. Co.***, 155 Wis.2d 808, 811, 456 N.W.2d 597, 598-99 (1990). Respondents have misread the definition of "insured." It described what class of persons had insurance coverage, not what kind of coverage they had. It extended whatever coverage the named insureds had under the policy to caretakers of the named insureds' animals, without changing the character of the coverage. The policy's other provisions, including the horse exclusion, applied to horse caretakers. The presence or absence of the word "liability" would not suggest anything regarding the coverage's character. Thus, the definition did not except the horse exclusion as to additional insureds. In sum, the policy was not contradictory or ambiguous.

By the Court.—Order reversed and cause remanded for further proceedings consistent with this opinion.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.