COURT OF APPEALS
DECISION
DATED AND RELEASED

October 1, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3504

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

KAREN T. RUNGE,

Plaintiff-Appellant,

v.

ALLSTATE INSURANCE COMPANY and GARLAND E. SCHULTHESS,

Defendants,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Defendant-Respondent,

v.

WHEATON FRANCISCAN SERVICES, INC.,

Defendant-Subrogee.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL P. SULLIVAN, Judge. *Affirmed*.

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Karen Runge appeals from a summary judgment in favor of American Family Insurance Company. Runge raises one issue on appeal: whether an insurance policy provision that denies motorist coverage when bodily injury is sustained by a person while occupying a motor vehicle owned by the insured but which vehicle is not specifically insured under the policy is a valid exclusion or void as against public policy or against the purpose of § 631.43(1), STATS. The trial court ruled that it was not. We affirm.

The facts of this case are not in dispute. Runge was injured in an accident allegedly due to the negligence of an underinsured motorist. At the time of the accident, Runge was riding a moped that she owned and that was insured by American Family. The moped policy provided liability and uninsured motorist coverage but did not provide for any underinsured motorist coverage.

Runge also had a policy of insurance with American Family for a 1991 Toyota Corolla that contained underinsurance coverage.[1] The policy contained the following "drive-other-car" exclusion:

EXCLUSIONS

This coverage does not apply for **bodily injury** to a person:
1.While **occupying**, or when struck by, a motor vehicle that is not insured under this policy, if it is owned by **you** or any resident of **your** household.

[1] The Toyota's underinsured motorist coverage endorsement states in part:

We will pay compensatory damages for **bodily injury** which an **insured person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle.**

(Emphasis in original.)

(Emphasis in original.) Runge filed a complaint naming among others, American Family as a defendant, seeking to recover her uncompensated damages through the Toyota policy based on the underinsured motorist provision. American Family moved for summary judgment on the grounds that there was no underinsured coverage available to Runge from the Toyota policy, citing the above noted exclusion. The trial court granted summary judgment in favor of American Family, finding the exclusion relied on by American Family to be enforceable.

We review decisions on summary judgment *de novo*, applying the same methodology of the trial court. ***Armstrong v. Milwaukee Mut. Ins. Co.***, 191 Wis.2d 562, 568, 530 N.W.2d 12, 15 (Ct. App. 1995), *aff'd*, ___ Wis.2d ___, 549 N.W.2d 723 (1996). Insurance-contract interpretation is a question of law, reviewed *de novo*. *See* ***Taryn E.F. v. Joshua M.C.***, 178 Wis.2d 719, 722, 505 N.W.2d 418, 420 (Ct. App. 1993).

In construing an insurance policy, we interpret its plain language the way a reasonable person in the position of the insured would have understood the words to mean. ***Schult v. Rural Mut. Ins. Co.***, 195 Wis.2d 231, 237, 536 N.W.2d 135, 137 (Ct. App. 1995). Absent any ambiguity, we give the terms of a statute their ordinary meaning. ***Id.***

Runge was involved in an accident with an underinsured motorist and thereby sustained bodily injury. At the time of the accident, Runge was driving a moped that she owned. The moped was not insured under the Toyota policy issued to Runge, which provided underinsured motorist coverage. Plainly, the exclusionary language contained in the Toyota policy states that no coverage is provided for injuries sustained in a vehicle owned by the insured but not insured under the Toyota policy. Since the moped was owned by Runge and was not a covered vehicle under the Toyota policy, the trial court correctly determined that the contract is unambiguous and Runge cannot claim underinsured coverage under the Toyota policy. *See* ***Schwochert v. American Family Mut. Ins. Co.***, 139 Wis.2d 335, 350-351, 407 N.W.2d 525, 532 (1987) ("drive-other-car" exclusion notifies the insured with multiple policies that one policy's underinsured motorist coverage will not apply to an accident involving an automobile insured under another policy).

An insurance company can limit the coverage of a policy issued by it as long as such limitation conforms to the law and is not contrary to public policy. Runge argues that § 631.43, STATS., invalidates the cited exclusionary language and that she should be allowed to stack the Toyota policy on the insurance provided to the other driver. She also argues that the exclusion is contrary to public policy. We disagree. Section 631.43(1) states, in pertinent part:

> GENERAL. When 2 or more policies promise to indemnify an insured against the same loss, no "other insurance" provisions of the policy may reduce the aggregate protection of the insured below the lesser of the actual insured loss suffered by the insured or the total indemnification promised by the policies if there were no "other insurance" provisions.

The trial court ruled that § 631.43(1) does not invalidate the exclusionary provision at issue, reasoning that § 631.43(1) only applies when multiple policies promise to indemnify an insured, meaning a single insured, against the same loss and since there were not multiple policies that promised to indemnify a single insured, § 631.43(1) does not mandate coverage. We agree. Section 631.43(1) does not apply here because Runge and the other driver are two different insureds.

Runge attempts to circumvent the plain meaning of § 631.43(1), STATS., by essentially arguing that the other driver is the "insured" person under her underinsurance policy thereby attempting to fulfill the multiple policy and single insured requirement of § 631.43(1). This argument lacks merit. Section 600.03(26), STATS., defines "insured" as "any person to whom or for whose benefit an insurer makes a promise in an insurance policy." The Toyota's underinsured motorist coverage endorsement states:

> As used in this endorsement:
> 1. **Insured person** means:
> a. **You** or a **relative**.
> b. Anyone else **occupying your insured car.**

> c.Anyone, other than a person or organization claiming by right of assignment or subrogation, entitled to recover the damages due to **bodily injury** to **you**, a **relative** or another occupant of **your insured car**.

(Emphasis in original.) The underinsurance provision contained in the Toyota policy was not for the benefit of the other driver—he was not an insured person under the policy. Further, there was no promise made by American Family to indemnify the other driver because insurers do not promise to indemnify non-insureds. Section 631.43(1) does not invalidate the exclusion.

Finally, Runge argues that public policy considerations preclude enforcement of the exclusion. She argues that a reasonable insured "would expect coverage for compensatory damages relative to those injuries caused by the underinsured operator." We disagree. The exclusion is clear, and requires that those who seek coverage pay for it. This is not contrary to public policy. Invalidating the exclusion would benefit only those who seek something for nothing, and this would be at the expense of other policyholders who have purchased coverage appropriate to their circumstances.

By the Court.—Judgment affirmed.

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