COURT OF APPEALS
DECISION
DATED AND RELEASED

July 16, 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(1), 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. 96-0342-FT

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

PATRICIA AND GLEN MCNAMARA,

Plaintiffs-Appellants,

v.

RURAL MUTUAL INSURANCE COMPANY,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

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

MYSE, J. Patricia and Glen McNamara appeal a judgment dismissing their complaint against Rural Mutual Insurance Company based upon the trial court's determination that an exclusionary clause in Rural's homeowner's policy applied to recreational motor vehicles.[1] The McNamaras contend that accidents arising from the use of recreational motor vehicles are covered under the unambiguous language of the policy. Alternatively, the

[1] This is an expedited appeal under RULE 809.17, STATS.

McNamaras contend that the policy is ambiguous and rules of construction require that we resolve the ambiguity in favor of coverage. Because we conclude that a reasonable insured would understand that under the terms of this policy injuries resulting from the use of recreational motor vehicles are covered only conditionally, and the conditions have not been met in this case, we affirm the judgment.

Patricia McNamara was injured when a recreational motor vehicle she was operating collided with a recreational motor vehicle operated by Amy McNamara. The collision occurred on property owned by Patricia and her husband, Glen. Patricia and Glen brought a personal injury action against Rural based on the fact that Rural had in effect an insurance policy issued to Amy's parents, Patrick and Shannon McNamara. Amy was an insured under her parents' homeowner's policy because she was a resident of her parents' household at the time of the accident. Rural moved for summary judgment and the trial court granted it, concluding that an exclusionary clause in Rural's policy applied to recreational motor vehicles.

We review a grant of summary judgment de novo, applying the same methodology as the trial court. ***Dipasquale v. American Family Ins. Co.***, 168 Wis.2d 75, 78, 483 N.W.2d 231, 233 (Ct. App. 1992). Summary judgment is appropriate where the facts are undisputed and only a question of law remains. ***Krause v. Massachusetts Bay Ins. Co.***, 161 Wis.2d 711, 714, 468 N.W.2d 755, 756 (Ct. App. 1991).

The issue is whether the exclusionary clause in Rural's policy applies to recreational motor vehicles. The interpretation of an insurance policy is a question of law that we review without deference to the trial court. ***Dipasquale***, 168 Wis.2d at 78-79, 483 N.W.2d at 233. An insurance policy should be interpreted as a reasonable person in the insured's position would understand it. ***Id.*** When the policy is unambiguous, we simply apply the language without engaging in construction. ***Id.*** at 79, 483 N.W.2d at 233. However, if the policy is ambiguous, the policy should be construed so as to provide coverage. ***Just v. Land Reclamation, Ltd.***, 155 Wis.2d 737, 746, 456 N.W.2d 570, 573 (1990). The language is ambiguous only if it is reasonably susceptible to more than one construction from the viewpoint of a reasonable person in the insured's position. ***Dipasquale***, 168 Wis.2d at 79, 483 N.W.2d at 233.

Because the parties agree that coverage applies under the general policy provisions, we look to the exclusion that Rural contends removes coverage for accidents involving recreational motor vehicles. The relevant exclusion provides:

> GENERAL EXCLUSIONS THAT APPLY TO ALL LIABILITY AND MEDICAL COVERAGES
>
> We do not pay for a loss:
>
> 1. resulting from the ownership, operation, main-tenance, use, loading or unloading of:
>
> ....
>
> b. Any motor vehicle or watercraft, except as provided in the Supplemental Coverages of this form; (This exclusion does not apply to bodily injury to a person while performing duties as a domestic employee of an insured.) (Emphasis deleted.)

The term motor vehicle is defined in the policy by the following provisions:

> Motorized Vehicle: Any self-propelled vehicle (assem-bled or unassembled, regardless of horsepower, number of wheels or method of surface contact) including parts and equipment. (This does not include small motorized equipment for the service of the insured premises such as a power lawn mower or snow blower.) (Emphasis deleted.)
>
> The following types of motorized vehicles have specific meanings as used in this policy:
>
> 1. Motor Vehicle means a motorized vehicle, trailer or semi-trailer designed for travel on public roads and subject to licensing (including any attached machinery or apparatus);
> 2. Recreational Motor Vehicle means a motorized vehicle (other than a motor vehicle as defined above), trailer or attached apparatus designed or used for recreation, vacation or leisure time activities. (Emphasis deleted.)

The exclusion applies to "any motor vehicle" or watercraft. The term motor vehicle has a specific meaning as found in the definitions contained in the policy. A motor vehicle is a subclass of motorized vehicle, which includes both motor vehicles and recreational motor vehicles. Motor vehicle is defined as "a motorized vehicle, trailer or semi-trailer designed for travel on the public roads and subject to licensing." Because a recreational motor vehicle is a subset of motorized vehicles, but not included within the definition of motor vehicle, a recreational motor vehicle is not a motor vehicle as that term appears in the exclusion.

A close reading of the language and the definition of the words used within the policy leads us to conclude that the exclusion of motor vehicles from coverage is not sufficiently broad to encompass recreational motor vehicles. If Rural desired to exclude recreational motor vehicles from coverage, it should have specifically used the term in the exclusion or used the term motorized vehicles, which includes both motor vehicles and recreational motor vehicles. Because the term motor vehicle appears in the exclusion and that term does not encompass recreational motor vehicles, we conclude that the exclusion, by its literal terms, does not encompass recreational motor vehicles.

Our conclusion that a recreational motor vehicle is not included within the literal terms of the exclusion does not end our inquiry. The exclusion makes reference to supplemental coverage available to an insured. We must therefore examine the terms of supplemental coverage to determine the meaning of the exclusion. The relevant supplemental coverage provision which provides an exception to the exclusion states in relevant part:

> 4. Incidental Motorized Vehicle Coverage: We will pay for bodily injury or property damage which:
> a. Occurs on the insured premises and results from the ownership, maintenance, use, loading or unloading of:
> ....
> 2. recreational motor vehicles;
> ....
> c. results from an insured's use of a recreational motor vehicle not owned by or rented to that insured.

The supplemental coverage provisions specifically grant coverage for bodily injury or property damage resulting from the use of recreational motor vehicles when it occurs on the insured's premises or when the recreational motor vehicle is not owned by the insured. The unambiguous language of the supplemental coverage provision is inconsistent with the literal terms of the exclusionary clause. Why would the policy have to restore coverage for use of recreational motor vehicles if the policy had not excluded coverage in the first place?

In construing and interpreting an insurance policy, we must consider the policy as a whole to give each of its provisions the meaning the parties intended. ***Schaefer v. General Cas. Co.***, 175 Wis.2d 80, 84, 498 N.W.2d 855, 856 (Ct. App. 1993). Therefore, we must reconcile the terms of a policy which grants coverage to recreational motor vehicles, does not appear to remove that coverage by an exclusion but provides for a specific grant of supplemental coverage on certain conditions. Because the grant of coverage for recreational motor vehicles is specifically conditioned, we cannot agree with the McNamaras' claim that there is an unambiguous grant of coverage for all accidents involving recreational motor vehicles. While an examination of a portion of the policy would lead to that conclusion, an examination of the policy as a whole discloses that there is only a conditional grant of coverage for recreational motor vehicles. We therefore conclude that, examining the policy as a whole, there is no clear and unambiguous grant of coverage for accidents involving recreational motor vehicles without condition or limitation.

Next, we must examine the language of the policy to determine whether a reasonable insured would be able to determine the coverage available for accidents involving recreational motor vehicles. *See* ***Dipasquale,*** 168 Wis.2d at 79, 483 N.W.2d at 233. We conclude that a reasonable insured would understand the homeowner's policy to provide coverage for bodily injury or property damage from the use of recreational motor vehicles only when it occurs on the insured's premises or when the recreational motor vehicle is not owned by the insured. In this case, the accident did not occur on the insured's premises and the insureds owned the recreational motor vehicle involved in the collision. Therefore, the injuries are not covered by this insurance policy.

We reach this conclusion for two reasons. First, we note that the coverage for recreational motor vehicles is specifically stated in the supplemental coverage portion of the policy. There is no ambiguity that

recreational motor vehicles are only conditionally covered by this policy. This specific and unambiguous language must prevail over ambiguous language that a reasonable insured could understand in either of two ways. Second, a strict reading of the definition portion of the policy leads us to conclude that recreational motor vehicles are a subset of motorized vehicles and are not included in the term motor vehicle. However, that language, when read with a specific grant of supplemental coverage relating to recreational motor vehicles, is insufficient to create an ambiguity. A reasonable insured would construe the term motor vehicle to include recreational motor vehicle as part of the exclusion when there is a specific grant of coverage, albeit conditional, for recreational motor vehicles in the supplemental coverage portion of the policy. The supplemental coverage provision granting conditional coverage to recreational motor vehicles would be unnecessary and meaningless if recreational motor vehicles were not excluded elsewhere in the policy. A construction giving reasonable meaning to every provision of a policy is preferable to one leaving part of the language useless or meaningless. ***Stanhope v. Brown County***, 90 Wis.2d 823, 848-49, 280 N.W.2d 711, 722 (1979). Because there is a specific grant of supplemental coverage, we conclude that a reasonable insured would construe the exclusion as encompassing recreational motor vehicles when considering the provisions of the policy as a whole.

Because we conclude that there is only one reasonable interpretation of the policy notwithstanding conflicts within the provisions of the policy, we conclude that there is no ambiguity that would have confused or misled a reasonable insured. A reasonable insured when examining the policy in question could reach only one conclusion in regard to coverage for recreational motor vehicles: the policy granted conditional coverage for recreational motor vehicles and recreational motor vehicles owned by the insured and used off the insured's premises are not within the grant of conditional coverage specifically provided by the policy. We therefore affirm the judgment dismissing the McNamaras' complaint.

By the Court.—Judgment affirmed.

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