

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JUNE 10, 1997

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. 96-2820

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JUDY PATRICIA BUSHMAKER,

PLAINTIFF,

V.

**GREEN BAY DIOCESE OF THE ROMAN CATHOLIC
CHURCH A/K/A THE CATHOLIC DIOCESE OF GREEN BAY,
ST. ELIZABETH SETON PARISH A/K/A ST. ELIZABETH
SETON, GREEN BAY, JOHN DOE "1", JOHN DOE "2", ABC
INSURANCE COMPANY, AND DEF INSURANCE COMPANY**

DEFENDANTS,

**GRE INSURANCE GROUP, F/K/A TOWER INSURANCE
COMPANY,**

DEFENDANT-RESPONDENT,

MONSIGNOR EDWARD M. WITCZAK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
JOHN D. MC KAY and N. PATRICK CROOKS, Judges. *Affirmed.*

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

PER CURIAM. Monsignor Edward Witzak appeals a summary and declaratory judgment that held GRE Insurance Group not obligated to indemnify and defend Witzak against Judy Bushmaker's lawsuit for tortious sexual conduct. After noting that Witzak had pleaded no contest to criminal charges that arose out of the incident, the trial court ruled that the GRE liability policy denied Witzak liability coverage for such acts. On appeal, Witzak raises three basic arguments: (1) the trial court wrongly, during a civil lawsuit, referred to Witzak's no contest pleas in the criminal case; (2) Bushmaker's complaint raises claims, such as negligence, that fell outside the gambit of the GRE policy's liability exclusion; and (3) the coverage issue may depend on a pending Wisconsin Supreme Court case or factual questions that the trial court could not resolve without a fact-finding proceeding. We reject these arguments and therefore affirm the summary judgment.

We agree with the trial court that the GRE policy furnished Witzak no liability coverage. We must give words in the GRE policy their ordinary meaning. See *Holsum Foods v. Home Ins. Co.*, 162 Wis.2d 563, 568-69, 469 N.W.2d 918, 920 (Ct. App. 1991). The GRE Sexual Abuse Coverage Endorsement that denied Witzak liability coverage is a broad based tortious sexual conduct exclusion. The endorsement denies coverage to anyone "who inflicts or in any way participates in activities that result in sexual abuse, sexual molestation, sexual exploitation, or sexual injury upon another person." The GRE exclusion is comprehensive. By use of the plain words "in any way participates," the

exclusion covers all aspects of a wrongdoer's activities related to tortious sexual conduct, no matter how Bushmaker or Witczak may recharacterize Witczak's wrongdoing in terms of asexual duties, pastoral negligence, or clerical malpractice. In the final analysis, such reformulations all converge on Witczak's tortious sexual conduct and thereby invoke the GRE broad based tortious sexual conduct exclusion. In short, the trial court correctly applied the GRE policy to Bushmaker's complaint.

Witczak's remaining arguments have no merit. First, we see nothing in the trial court's reference to Witczak's no contest plea that influenced the trial court's insurance coverage decision. We agree with Witczak that no contest pleas have no collateral import or evidentiary place in civil lawsuits. *See Lee v. State Bd. of Dental Examiners*, 29 Wis.2d 330, 334, 139 N.W.2d 61, 63 (1966). Here, the trial court adhered to standard practice. It referred to the no contest plea as background information; it did not purport to use the plea as a basis for deciding the insurance coverage issues. It examined the coverage issue exclusively by means of the GRE policy and the allegations in Bushmaker's complaint. Second, Witczak has identified no factual issues that could conceivably affect the coverage question. If such factual issues exist, Witczak has a duty to identify them now; otherwise, he raises a purely hypothetical question, with no practical consequence to the appeal. *See Pension Management, Inc. v. Du Rose*, 58 Wis.2d 122, 128, 205 N.W.2d 553, 555-56 (1973). Last, we note that the Wisconsin Supreme Court recently resolved the pending case, and its decision has no relevance to this appeal. The case dealt with diocese liability. *See L.L.N. v. J. Gibbs Clauder*, No. 95-2084, slip op. (Wis. May 23, 1997). Because the record reveals no issue of material fact, we have no basis to overturn the trial court's coverage decision. *See* § 802.08, STATS.

By the Court—Order affirmed.

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

