COURT OF APPEALS
DECISION
DATED AND FILED

August 2, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2005AP38 Cir. Ct. No. 2002CV606

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

DANIEL J. KNISPEL, JACOB KNISPEL AND RYAN KNISPEL BY THEIR GUARDIAN AD LITEM, MARK P. WENDORFF,

PLAINTIFFS-APPELLANTS,

ACUITY, A MUTUAL INSURANCE COMPANY,

INVOLUNTARY-PLAINTIFF-CO-APPELLANT,

V.

WEST BEND MUTUAL INSURANCE COMPANY, VALLEY EXPRESS, LLC, RICHARD J. BROST AND NORTHLAND INSURANCE COMPANY,

DEFENDANTS,

UNITED STATES FIRE INSURANCE COMPANY, WESTCHESTER FIRE INSURANCE COMPANY, AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY AND THE AMERICAN INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Marathon County: VINCENT K. HOWARD, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PETERSON, J. Daniel Knispel, his sons, Jacob and Ryan Knispel, and Acuity (collectively, Knispel) appeal a summary judgment denying coverage under United States Fire Insurance Company's commercial automobile liability policy. Knispel argues the circuit court erred when it concluded that Richard Brost, the tortfeasor, is not an insured under the United States Fire policy. Knispel further contends that an endorsement, which excludes coverage to certain leased vehicles, does not apply to Brost because: (1) its plain language does not apply; (2) if ambiguous, it must be interpreted to not apply; or (3) it is unenforceable because it violates Wisconsin's omnibus statute, WIS. STAT. § 632.32.[1] We conclude that the endorsement does exclude coverage and need not comply with § 632.32. Therefore, we affirm the judgment.

BACKGROUND

¶2 On May 9, 2002, Daniel Knispel was backing a forklift out of a trailer. The driver of the trailer, Brost, pulled away from the loading dock. The forklift fell on Daniel, causing him serious and permanent injuries. Brost was operating under a contract with Valley Express, LLC. Under that contract, Brost

[1] Knispel makes several additional arguments regarding the applicability and effect of another endorsement to the policy, CA 20 09 (7/97). Because we conclude that CO-14 excludes coverage, we need not address Knispel's additional arguments. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

provided the tractor and Valley Express provided the trailer, which it had leased from another company, Xtra Corporation d/b/a Xtra Lease.

¶3 There are a number of insurance policies that arguably provide coverage for Daniel's injuries. However, the only policy relevant to this appeal is the United States Fire policy issued to Xtra.[2] Coverage under the policy was the subject of cross-motions for summary judgment. The circuit court concluded that Brost was not an insured under the policy and therefore the policy did not provide coverage for Daniel's injuries. Accordingly, it denied Knispel's motion and granted United States Fire's motion.

STANDARD OF REVIEW

¶4 We review a summary judgment independently, using the same methodology as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). The interpretation of an insurance policy in the context of undisputed facts is a question of law that we review independently. ***Folkman v. Quamme***, 2003 WI 116, ¶12, 264 Wis. 2d 617, 665 N.W.2d 857. We construe insurance policies to give effect to the intent of the parties as expressed in the language of the policy. ***Id.***, ¶16. In doing so, we give the words in the policy their common and ordinary meaning, as a reasonable person in the position of the insured would understand them. ***Id.***, ¶17.

[2] United States Fire, the primary insurer, is the only respondent to file a brief with this court. The remaining respondents, the excess insurers, Westchester Fire Insurance Company, American Guarantee & Liability Insurance Company, and The American Insurance Company, have adopted United States Fire's arguments. Accordingly, we refer to the respondents' arguments collectively as being those of United States Fire.

¶5 "Where the language of the policy is plain and unambiguous, we enforce it as written …." ***Danbeck v. American Fam. Mut. Ins. Co.***, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150. Policy language is ambiguous if, when read in context, it is reasonably or fairly susceptible to more than one interpretation. ***Garriguenc v. Love***, 67 Wis. 2d 130, 135, 226 N.W.2d 414 (1975). We construe ambiguous language in favor of coverage. ***Danbeck***, 245 Wis. 2d 186, ¶10.

¶6 The interpretation of a statute is also a question of law we review independently. ***Reyes v. Greatway Ins. Co.***, 227 Wis. 2d 357, 364-65, 597 N.W.2d 687 (1999). "The purpose of statutory interpretation is to discern the intent of the legislature." ***Id.*** at 365. We look to the plain language of the statute to determine intent. ***Id.*** If the language is unambiguous, we enforce it as written without resorting to judicial construction. ***Id.***

DISCUSSION

¶7 Knispel argues that Brost is an insured under the policy and therefore the policy provides coverage. However, because we conclude that Endorsement CO-14 excludes coverage, we decline to decide whether Brost is an insured in the first instance. Knispel makes alternate arguments regarding the language of CO-14: either the language is clear and does not exclude coverage or the language is ambiguous and must be construed against United States Fire to provide coverage. Because we conclude CO-14's plain language can only be reasonably interpreted to exclude coverage, we need not address Knispel's alternate argument regarding ambiguity.

¶8 Endorsement CO-14 of the policy reads:

> THE FOLLOWING CLAUSE IS MADE PART OF THIS POLICY:
>
> "IT IS AGREED THAT THE LESSEES OF VEHICLES, LEASED TO THEM BY THE NAMED INSURED, ARE NOT AN INSURED UNDER THIS POLICY."

The named insured is Xtra, the owner of the trailer. Knispel contends that, by its plain language, CO-14 excludes only "lessees of vehicles." Because there is no lease between the named insured, Xtra, and Brost, Knispel argues, CO-14 does not exclude Brost as an insured.

¶9 United States Fire, however, argues that Knispel's interpretation is unreasonable. By Knispel's reading, the only excluded lessee is Valley Express. However, Valley Express is a corporate entity with no capacity to operate the trailer itself. Because corporate entities can only act through actual people, a policy term that only excludes a corporate entity and not people acting on behalf of the entity is meaningless. *See* ***Frost v. Whitbeck***, 2002 WI 129, ¶21, 257 Wis. 2d 80, 654 N.W.2d 225 ("A construction of an insurance policy that gives reasonable meaning to every provision of the policy is preferable to one leaving part of the language useless or meaningless."). Therefore, United States Fire argues, a reasonable insured would interpret CO-14 to exclude coverage for anyone using the trailer on behalf of a lessee such as Valley Express.

¶10 Knispel replies that CO-14 is not meaningless because it includes a lessee's employees but not its independent contractors, like Brost. However, there is no support for this distinction in the plain language of CO-14. Additionally, Knispel's interpretation yields absurd results: that Xtra contracted to avoid liability for its lessees' employees but would assume liability for the lessees'

independent contractors. *See* ***Nichols v. American Employers Ins. Co.***, 140 Wis. 2d 743, 751, 412 N.W.2d 547 (Ct. App. 1987) ("[P]olicies should be given a reasonable interpretation and not one [that] leads to absurd results."). Accordingly, we conclude the only reasonable interpretation of CO-14's plain language is to include Valley Express and its permittees. Thus, CO-14 excludes coverage here.

¶11 Finally, Knispel argues that CO-14 violates Wisconsin's omnibus statute, WIS. STAT. § 632.32, specifically subsection (3)(a):

> Coverage provided to the named insured applies in the same manner and under the same provisions to any person using any motor vehicle described in the policy when the use is for purposes and in the manner described in the policy.

Thus, § 632.32(3)(a) requires that coverage must apply to any person using the vehicle.

¶12 United States Fire counters that its policy is not required to comply with the omnibus statute because the policy is not governed by the statute. WISCONSIN STAT. § 632.32(1) defines the scope of the omnibus statute as follows:

> Except as otherwise provided, this section applies to every policy of insurance issued or delivered in this state against the insured's liability for loss or damage resulting from accident caused by any motor vehicle, whether the loss or damage is to property or to a person.

This policy was issued in Arizona. United States Fire argues that, because the policy was not "issued or delivered in this state," WIS. STAT. § 632.32(3)(a) does not apply. It cites ***Danielson v. Gasper***, 2001 WI App 12, ¶10, 240 Wis. 2d 633, 623 N.W.2d 182, where we concluded the omnibus statute did not apply to a Minnesota insurer that issued a policy in Minnesota.

¶13 Knispel contends that ***Danielson*** is distinguishable because here the policy's coverage area is defined as the United States, which includes Wisconsin. Therefore, Knispel argues, the policy should comply with Wisconsin law. We are unpersuaded. On its face, the statute applies to policies "issued or delivered in this state." WIS. STAT. § 632.32(1). Because the policy was not issued or delivered in Wisconsin, the omnibus statute does not apply.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.