

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 13, 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. 2004AP3357-FT

Cir. Ct. No. 2004CV258

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

PAMELA JONES,

PLAINTIFF-APPELLANT,

V.

PROGRESSIVE NORTHERN INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Pamela Jones appeals a judgment dismissing her uninsured motorist claim against Progressive Northern Insurance Company.¹

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Jones argues the circuit court erred by concluding that the subject insurance policy unambiguously prohibited stacking uninsured motorist coverage. We disagree and affirm the judgment

BACKGROUND

¶2 Jones, a passenger in a vehicle she owned, was injured in an accident caused by the negligence of an uninsured motorist. At the time of the accident, Jones had an automobile insurance policy with Progressive, issued under one policy number but providing uninsured motorist coverage for two different vehicles. Jones ultimately sought a declaration of her right to stack the separate uninsured motorist limits. The circuit court rejected her claims and this appeal follows.

DISCUSSION

¶3 The grant or denial of relief in a declaratory judgment action is a matter within the discretion of the circuit court. *United Fire & Cas. Co. v. Kleppe*, 174 Wis. 2d 637, 640, 498 N.W.2d 226 (1993). A circuit court acts outside the ambit of that discretion when it bases its discretionary decision upon an error of law. *Id.* Resolution of this case turns on the interpretation of an insurance contract, a question of law that we review independently, although benefiting from the circuit court's analysis. *Hull v. State Farm Mut. Auto. Ins. Co.*, 222 Wis. 2d 627, 636, 586 N.W.2d 863 (1998). A court gives insurance policy language its common and ordinary meaning, construing the insurance policy as would a reasonable person in the position of the insured. *See Wisconsin Label Corp. v. Northbrook Prop. & Cas. Ins. Co.*, 221 Wis. 2d 800, 806, 586 N.W.2d 29 (1998).

¶4 Citing *Burns v. Milwaukee Mut. Ins. Co.*, 121 Wis. 2d 574, 360 N.W.2d 61 (Ct. App. 1984), Jones argues that because she paid premiums on each vehicle, she had two contracts of insurance with Progressive regardless whether she was issued only one policy number. Progressive does not dispute this proposition but, rather, contends that regardless of the number of contracts issued, its policy prohibited stacking the uninsured motorist coverage.

¶5 WISCONSIN STAT. § 632.32(5)(f) provides:

A policy may provide that regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid the limits for any coverage under the policy may not be added to the limits for similar coverage applying to other motor vehicles to determine the limit of insurance coverage available for bodily injury or death suffered by a person in any one accident.

Jones argues that Progressive's policy does not contain sufficient language to prohibit stacking of uninsured motorist coverage. Alternatively, Jones contends the policy's language is ambiguous and should be construed in her favor.

¶6 The policy's declaration page informs the insured that the uninsured motorist coverage limits are \$50,000 per person and \$100,000 per accident. The declaration page further provides: "The following coverages and limits apply to each described vehicle as shown below. Coverages are defined in the policy and subject to the terms and conditions contained in the policy, including amendments and endorsements." This language directs the insured to the body of the policy for the definition of coverage and for an explanation of the terms and conditions that the coverage is subject to.

¶7 Part III of the policy relates to uninsured and underinsured motorist coverage. The Limits of Liability section for uninsured motorist coverage

provides, in relevant part: “The limit of liability shown on the Declarations Page for the coverages under this Part III is the most we will pay regardless of the number of ... covered vehicles.” Because the policy unambiguously prohibits stacking uninsured motorist coverage regardless of the number of covered vehicles, the circuit court properly concluded that Progressive effectively limited its coverage in this case to \$50,000. We therefore affirm the judgment.

By the Court.—Judgment affirmed.

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

