

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 25, 2006**

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. 2005AP2279**

**Cir. Ct. No. 2004CV167**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**ACUITY, A MUTUAL INSURANCE COMPANY,**

**PLAINTIFF-APPELLANT,**

**V.**

**ANTON REMS AND JUDY REMS,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Vilas County:  
NEAL A. NIELSEN, III, Judge. *Affirmed.*

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

¶1 PER CURIAM. Acuity appeals a declaratory judgment that its policy provided coverage for a theft loss sustained by Anton and Judy Rems. Acuity argues its policy's plain language excludes coverage for the loss because the stolen property was not at the Remses' residence premises, as defined by the

policy, at the time of the theft. We conclude the policy's plain language does not exclude the Remses' loss and therefore affirm the judgment.<sup>1</sup>

## BACKGROUND

¶2 In May 2003, the Remses discovered tools had been stolen from their garage. They made a claim for the loss under their Acuity homeowners' insurance policy. The policy's declarations listed the insured residence premises as the Remses' home on Upper Road in Arbor Vitae. The only building at that address is the house in which the Remses reside. The theft occurred at another property owned by the Remses located on Highway 51 in Arbor Vitae. That property consists of seven acres, a mobile home, and a garage. The stolen items were taken from the garage, which was the only garage owned by the Remses and was kept locked at all times. The mobile home had been leased in the past, but was vacant at the time of the theft. Tenants never had access to the garage.

¶3 Acuity commenced this declaratory judgment action, alleging its policy did not provide coverage for the Remses' loss. Acuity contended that an exclusion applied because the tools were "at any other residence owned by" the Remses—the Highway 51 property. The Remses, on the other hand, argued the exclusion did not apply because the tools were in their garage, kept separate from the mobile home residence, and thus were not at "any other residence." The circuit court granted declaratory judgment in the Remses' favor.

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<sup>1</sup> The circuit court concluded the policy provided coverage based on the policy's definition of "insured location." We employ different reasoning to reach the same result and therefore affirm the judgment on other grounds. See *State v. Scheidell*, 227 Wis. 2d 285, 311 n.14, 595 N.W.2d 661 (1999).

## STANDARD OF REVIEW

¶4 The sole issue on appeal involves the interpretation of an insurance policy in the context of undisputed facts, which is a question of law we review independently. *State v. City of Rhinelander*, 2003 WI App 87, ¶5, 263 Wis. 2d 311, 661 N.W.2d 509. “Where the language of the policy is plain and unambiguous, we enforce it as written, without resort to rules of construction or principles in case law.” *Danbeck v. American Fam. Mut. Ins. Co.*, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150.

## DISCUSSION

¶5 Personal property is insured under Coverage C of the policy, which provides: “We cover personal property owned or used by an **insured** while it is anywhere in the world.” The policy specifically covers losses due to the peril of theft. However, the policy contains an exclusion, which states:

This peril does not include loss caused by theft that occurs off the **residence premises** of:

- a. Property while at any other residence owned by, rented to or occupied by an **insured**, except while an **insured** is temporarily living there. ....

Bolded terms are specifically defined in the policy. “Residence premises” is defined as:

- a. The one family dwelling, other structures and grounds;  
or
- b. That part of any other building;

where you reside and which is shown as the “**residence premises**” in the Declarations.

¶6 Acuity argues that the plain language of the exclusion applies to the Remses' loss. It argues the Highway 51 property is "any other residence" owned by the Remses, the tools were in the garage at the Highway 51 property, and, therefore, the tools are excluded from coverage because they were at "any other residence." We disagree. The tools were not at another residence, they were in the Remses' locked storage garage. That garage was kept separate from the mobile home residence at the Highway 51 property. Thus, the garage is more akin to a garage sitting on an empty lot or a garage located across the street from a house. The garage is not part of the mobile home and thus the tools were not at "any other residence" at the time of the theft. We conclude the garage is not "any other residence" and, therefore, the plain language of the exclusion does not apply and the Remses' loss is covered.

*By the Court.*—Judgment affirmed.

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

