COURT OF APPEALS
DECISION
DATED AND FILED

January 30, 2007

A. John Voelker
Acting 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. 2006AP1499 **Cir. Ct. No. 2004CV156**

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

JAMES CHUTE AND AMBER CHUTE, BY HER GUARDIAN AD LITEM, MATTHEW A. BIEGERT,

PLAINTIFFS-APPELLANTS,

V.

AMICA MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT,

BRENT REYNOLDS, TANYA LAMSON, ANDREW L. KLOPP AND ABC INSURANCE COMPANY,

DEFENDANTS,

SOCIETY INSURANCE,

INTERVENOR.

APPEAL from a judgment of the circuit court for Burnett County: MICHAEL J. GABLEMAN, Judge. *Reversed*.

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

¶1 PER CURIAM. Amber Chute, together with her father and guardian ad litem, appeals a summary judgment granted to Amica Mutual Insurance Company. Chute argues the court erred in concluding the Amica policy in question does not provide coverage for her injuries. We agree and reverse the judgment.

BACKGROUND

¶2 This case arises out of a one-car accident in the early morning hours of April 27, 2002. Amber Chute, who was fourteen at the time, and nineteen-year-old Brent Reynolds were in the vehicle.[1] Chute was ejected from the vehicle and severely injured.

¶3 Chute filed suit against Reynolds, alleging his negligence caused the accident. In her amended complaint, Chute added a claim against Amica. Chute alleged injuries caused by Reynolds were covered under the liability portion of a policy Amica issued to a third party, Tanya Lamson.

¶4 Lamson is a resident of Anoka, Minnesota. Her only connection to this suit is through the Pontiac Grand Am involved in the accident. On January 18, 2002, she purchased the Grand Am from Siren Auto Sales in Siren, Wisconsin. However, when she drove the vehicle home to Anoka, she discovered

[1] It is not clear which of the two was driving and which was the passenger.

it had significant mechanical problems. She contacted the proprietor of Siren Auto, Anthony "Tony" Andrews, and Andrews promised to fix the Grand Am and give her a different vehicle to use while he repaired it. Lamson drove the Grand Am back to Siren Auto the next day, and Andrews gave her a Ford Taurus to use as a loaner.

¶5 Soon after this exchange, Lamson insured the Grand Am through Amica. However, Lamson never drove the Grand Am after returning it to Siren Auto. She became dissatisfied with Siren Auto's slow progress in repairing it and opted instead to purchase the Taurus Andrews had allowed her to use as a loaner. Lamson testified that transaction occurred on May 6, 2002, and Andrews had no knowledge she intended to buy the Taurus prior to that date. Lamson transferred the Amica policy to the Taurus on May 6.

¶6 Unbeknown to Lamson, on May 6 Siren Auto had already sold the Grand Am to Reynolds. The sale to Reynolds took place on or about April 24; however, Reynolds apparently never applied for title to it.[2]

¶7 The accident involving the Grand Am occurred April 27, while the Amica policy was still in effect. As noted above, Chute claimed the liability portion of the Amica policy covered Reynolds' negligence. On November 18, 2005, Amica moved for summary judgment, arguing its policy did not provide coverage. The circuit court agreed and granted summary judgment to Amica.

[2] This is not the only missing record involving the Grand Am. Siren Auto also does not have certain records related to the original sale of the vehicle to Lamson. However, there is reason to question whether Siren Auto kept proper business records. According to a news story in the record, Andrews was federally indicted for mail fraud in January 2006. The indictment alleged he falsified documents and misappropriated a number of car payments made by his customers starting in January 2000.

STANDARD OF REVIEW

¶8 This case requires us to determine the meaning of Amica's insurance policy and WIS. STAT. § 632.32(5)(d).[3] The meaning of an insurance contract is a question of law reviewed without deference to the circuit court, as is the meaning of a statute. ***Gresens v. State Farm Mut. Auto. Ins. Co.***, 2006 WI App 233, ¶6, 724 N.W.2d 426; ***Town of Grand Chute v. Outagamie County***, 2004 WI App 35, ¶7, 269 Wis. 2d 657, 676 N.W.2d 540.

DISCUSSION

¶9 Chute argues Reynolds was an insured under the language of the policy and none of the exclusions from coverage applies. Amica disputes Chute's interpretation of the policy. Amica argues Reynolds was not an insured, and even if he was, coverage is excluded because Reynolds did not have a reasonable belief he was entitled to use the vehicle. Amica also claims Siren Auto's sale of the Grand Am to Reynolds terminated coverage under WIS. STAT. § 632.32(5)(d). We conclude: (1) the unambiguous language of the Amica policy includes coverage for Reynolds' negligence; and (2) section 632.32(5)(d) is merely a permissible

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

provision not included in Amica's policy, and therefore does not affect the meaning of the policy.[4]

¶10 The Amica policy, as relevant here, provides:

> We will pay damages for **bodily injury** or **property damage** for which any **insured** becomes legally responsible because of an auto accident.
>
> ….
>
> **"Insured"** as used in this Part means: … 2. Any person using **your covered auto**.

The definitions section states:

> "**Your covered auto**" means: 1. Any vehicle shown in the Declarations. (Emphasis in original).

The declarations page lists the Grand Am.

¶11 The meaning of this language is straightforward. The Grand Am is listed in the declarations and is therefore "your covered auto." Therefore, an "insured" is any person using the Grand Am. Reynolds was using the Grand Am during the April 27 accident. Therefore, Reynolds was an "insured," and Amica

[4] As a threshold matter, the parties disagree on whether we should apply Wisconsin or Minnesota law. Chute argues Minnesota law governs interpretation of the policy because it is a policy insuring a Minnesota resident and was issued in Minnesota. We need not resolve this question. Both parties agree the rules governing interpretation of insurance contracts in the two states do not differ in any way that is relevant to resolution of the case. Choice of law could potentially matter with regard to Amica's argument applying WIS. STAT. § 632.32(5)(d). However, because we conclude § 632.32(5)(d), if applicable, does not affect the meaning of the Amica policy, we need not decide which state's law applies.

must pay damages Reynolds became legally responsible for as a result of the April 27 accident.

¶12 We next turn to the exclusion cited by Amica. That exclusion provides:

> We do not provide Liability Coverage for any **insured:**
>
> ….
>
> 8. Using a vehicle without a reasonable belief that that **insured** is entitled to do so….

The exact circumstances involving the transfer of the Grand Am from Siren Auto to Reynolds are not clear. However, Amica argues throughout its brief that Reynolds "indisputably owned and possessed" the Grand Am at the time of the accident. If Amica believes on these facts that Reynolds was the rightful owner of the Grand Am, we see no reason why Reynolds could not also reasonably believe he was the rightful owner of the Grand Am, and therefore was entitled to use it.

¶13 Amica's arguments to the contrary are voluminous. Essentially, they are as follows: (1) the definition of "your covered auto" terminated coverage when Reynolds purchased the Grand Am; (2) the exclusion discussed above applies because Reynolds did not have Lamson's permission to use the Grand Am; and (3) under WIS. STAT. § 632.32(5)(d), coverage terminates on the sale of an automobile. We address each in turn.

¶14 Amica first argues that "your covered auto" can only mean an automobile owned by the policyholder, and that a sale turns "your covered auto" into "the buyer's covered auto." The problem with this argument is that "your covered auto" is a defined term that under this policy meant simply the Grand Am, without regard to ownership. Amica's argument is based on the common meaning

of "your covered auto"—a meaning that is at odds with the policy's unambiguous definition of that term.

¶15 At least under Wisconsin law, Amica could have included a specific provision terminating the policy when the Grand Am was sold. *See* WIS. STAT. § 632.32(5)(d). It did not do so. We see nothing absurd about coverage that terminates when the policyholder cancels coverage or transfers coverage to another vehicle, rather than at the moment the vehicle is sold. In fact, in Minnesota insurance law, liability coverage often follows the vehicle and not the person. *See* ***Progressive Specialty Ins. Co. v. Widness***, 635 N.W.2d 516, 521 (Minn. 2001).

¶16 Second, Amica argues the exclusion for an insured "using a vehicle without a reasonable belief that that insured is entitled to do so" applies because Reynolds did not have Lamson's permission to use the Grand Am. Amica cites a variety of nonbinding authority interpreting this same "reasonable belief" term as requiring permission from the vehicle's owner.[5]

¶17 However, these cases are distinguishable on their facts. All involve situations where the only reason the insured could have reasonably believed he or she was entitled to use the vehicle was permission from the owner. For example, in ***Westenfield*** the insured was a passenger who caused the accident by grabbing the steering wheel without the driver's permission. ***Horace Mann Ins. Co. v. Westenfield***, No. C5-92-792, 1993 WL 3853, at *1 (Minn. App. Jan. 12, 1993),

[5] Amica cites an unpublished Minnesota Court of Appeals case and several written circuit court opinions. Under Minnesota law, unpublished opinions have no precedential value but may be cited in certain instances. *See* MINN. STAT. ANN. § 480A.08(c)(5) (West 2007).

overruled on other grounds, 496 N.W.2d 410 (Minn. 1993). The only reason the passenger could have reasonably believed he was entitled to grab the wheel was if he had permission from the owner. Therefore, in that case a reasonable belief was equivalent to permission from the owner. Here, however, there is an independent reason, other than Lamson's permission, that Reynolds believed he was entitled to use the Grand Am: he reasonably believed he had rightfully purchased the Grand Am from Siren Auto.

¶18 Finally, Amica argues coverage terminates on the sale of an automobile under WIS. STAT. § 632.32(5)(d). Even assuming Wisconsin law applies to this case, Amica's argument fails. Section 632.32(5)(d) merely allows insurance policies to include a provision terminating coverage at the sale of the automobile. It does not affect the meaning of a policy that does not include such a provision.

¶19 WISCONSIN STAT. § 632.32(5)(d) provides: "If a motor vehicle covered by the policy is sold or transferred, the purchaser or transferee is not an additional insured unless the consent of the insurer is endorsed on the policy." Statutes are to be read in context, as part of the whole and in relation to surrounding statutes. ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. Statutes are also to be read reasonably, to avoid absurd or unreasonable results. ***Id.***

¶20 Here, the quoted language is under the heading "permissible provisions" and is surrounded by other provisions insurers are permitted—but not

required—to include in their liability insurance policies.[6] Like the surrounding provisions, WIS. STAT. § 632.32(5)(d) lists a potential policy term favorable to insurers. This is in stark contrast to the required provisions, which are favorable to policyholders. *See* WIS. STAT. § 632.32(3)-(4). As Chute points out in her brief, reading § 632.32(5)(d) as a required term would require us to read an additional limitation on coverage into the contract that the insurer never bargained for.

¶21 It is true, as Amica points out, that WIS. STAT. § 632.32(5)(d) does not include the phrase "a policy may provide" or some variation on it, as do the other paragraphs in subsection (5). However, the legislative explanation accompanying the last revision to paragraph (5)(d) clarifies any ambiguity the lack of this language creates. In the 1977 statutes, the language now found in paragraph (5)(d) was part of § 632.32(2)(b) (1977). Paragraph (2)(b) was titled "Required provisions." However, paragraph (2)(b) was a lengthy, multi-sentence paragraph that in fact included mandatory provisions, a prohibited provision, and various terms insurers were permitted but not required to include in their policies.

¶22 In 1979, the legislature eliminated paragraph (2)(b) and divided its contents between a new subsection (3) titled "Required provisions," a new subsection (5) titled "Permissible provisions," and a new subsection (6) titled "Prohibited provisions." *See* 1979 Wis. Laws ch. 102 § 171. The text of § 171 included a note that specifically dealt with the new paragraph (5)(d) at issue here:

> Subsection (5) continues the permitted provisions of former sub. (2)(b). Paragraph (d) continues a sentence of former

[6] Headings are not law; however, we do rely on them as "persuasive evidence" of a statute's meaning. ***Mireles v. LIRC***, 2000 WI 96, ¶60 n.13, 237 Wis. 2d 69, 613 N.W.2d 875.

> s. 632.32(2)(b), relocated in relation to other provisions to make its application clearer.

If paragraph (5)(d) was intended, as Amica argues, to be a mandatory provision or stand alone rule governing insurance policies, the legislature could easily have included it with the other mandatory provisions in subsection (3) or in a separate subsection. That the legislature specifically chose to include this provision under "permitted provisions" in order to clarify its meaning shows it intended subsection (5)(d) to be permissive rather than mandatory.

By the Court.—Judgment reversed.

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