

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 10, 1995

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. 94-2927

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

WEST AMERICAN INSURANCE COMPANY,

Plaintiff-Appellant,

v.

INTEGRITY MUTUAL INSURANCE COMPANY,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN J. DiMOTTO, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. West American Insurance Company appeals from a judgment dismissing its action against Integrity Mutual Insurance Company following cross-motions seeking summary judgment. West American claims the trial court erred in granting Integrity's motion for summary judgment. Because Integrity's policy excluded coverage, the trial court did not err in granting Integrity's motion for summary judgment. Accordingly, we affirm.

I. BACKGROUND

This action arises out of an automobile-pedestrian accident that occurred on December 20, 1989. Frederick R. Rittenhouse, while driving his mother's car, was running an errand for his employer, BZ Engineering. The accident occurred when Rittenhouse struck a pedestrian, Minnie R. West. West American insured Rittenhouse's employer. Integrity insured Rittenhouse's mother.

West filed suit against Rittenhouse, BZ, and West American. Shortly thereafter, West American negotiated a settlement in the amount of \$110,000. A release was executed and West agreed to assign any rights she had against Integrity to West American.

West American filed suit against Integrity on contribution and subrogation theories. Integrity filed a motion for summary judgment on the grounds that the release operated to bar a claim against it, that West American's failure to join them so that they could participate in any settlement prejudiced them, and that there is no coverage under Integrity's policy. The trial court granted Integrity's motion for summary judgment. West American now appeals.

II. DISCUSSION

The trial court granted Integrity's motion for summary judgment on the grounds that the absolute release of Rittenhouse operated to release Integrity, and that West American's conduct estopped them from seeking subrogation from Integrity. We affirm the trial court's judgment, but on different grounds. See *Jones v. Gerhardstein*, 135 Wis.2d 161, 166, 400 N.W.2d 1, 3 (Ct. App. 1986) (we will affirm the trial court's decision if the result was correct), *aff'd*, 141 Wis.2d 710, 416 N.W.2d 883 (1987). Our review compels us to conclude that the business exclusion in Integrity's policy validly excludes coverage under the facts of this case. Because the exclusion applies, the trial court did not err in granting summary judgment in favor of Integrity because no claim existed against Integrity.

Our review in this case involves the interpretation of an insurance contract, which is a question of law that is reviewed *de novo*. See *Katze v. Randolph & Scott Mut. Fire Ins. Co.*, 116 Wis.2d 206, 212, 341 N.W.2d 689, 691 (1984). The exclusion that precludes coverage is the “business exclusion” within Integrity’s policy. West American argues that the business exclusion does not apply because: (1) it is ambiguous; and (2) it violates the omnibus statute, § 632.32(3), STATS.¹

We begin our analysis by examining the language of the exclusion and other relevant language of the policy. The exclusion states that coverage under the policy does not apply to:

Bodily injury or property damage arising out of the ownership, maintenance or use of any vehicle by any person employed or otherwise engaged in any business or occupation. This exclusion does not apply to your insured car when it is used by an insured person in your business or occupation.

The definition section of the policy defines “*your*” to mean “the Policyholder named in the Declarations and spouse if living in the same household.”

A. Ambiguity.

West American’s first claim is that this language is ambiguous. A contract is ambiguous when its words and phrases are reasonably susceptible to

¹ Section 632.32(3), STATS., provides in pertinent part:

[E]very policy subject to this section issued to an owner shall provide that:

- (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.

more than one construction “from the viewpoint of a reasonable person of ordinary intelligence in the position of the insured.” *Schroeder v. Blue Cross & Blue Shield*, 153 Wis.2d 165, 174, 450 N.W.2d 470, 473 (Ct. App. 1989). We find no ambiguity here. The language of Integrity's exclusion excludes coverage for damages arising out of an auto accident that occurred while engaged in business activities. The exclusion contains an exception that provides coverage for damages arising out of an auto accident involving an *insured car*, when used by an *insured person* in *your business*. As noted, “*your*” is defined to mean the policyholder or a spouse living in the same household. In other words, if an insured gets into an accident while driving an insured car for the purposes of the policyholder/spouse's business, the business exclusion does not apply and the policy affords coverage.

West American's contention that the exception language is ambiguous because it could be construed to provide Rittenhouse coverage when he is driving an insured car in *his* business is unreasonable in light of the definition discussed above.

B. Omnibus Clause.

West American also claims that the exclusion violates the omnibus statute because the exclusion could be construed so that it would not supply the *same* coverage to Rittenhouse as it did to his mother, the policyholder. We disagree.

We conclude that the only reasonable construction of the exclusion does not violate the omnibus statute because it affords the same coverage to Rittenhouse and his mother. The construction is simple: coverage for business activities is not excluded if it involved an insured car, being driven by an insured person in the policyholder/spouse's business. Thus, Integrity's policy provides coverage both to Rittenhouse and to his mother if either the mother or Rittenhouse uses the car in the mother's business. This comports with the

requirements of the omnibus statute because both Rittenhouse and his mother are afforded the same coverage.²

By the Court. – Judgment affirmed.

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

² Because we resolve this appeal on the basis of the exclusion, it is not necessary for us to address West American's additional arguments. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).