

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 21, 2012

Diane M. Fremgen
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. 2011AP2615

Cir. Ct. No. 2010CV230

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ROBERT S. BILLER AND SHARRON L. BILLER,

PLAINTIFFS-APPELLANTS,

V.

FARMERS INSURANCE EXCHANGE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Sawyer County:
GERALD L. WRIGHT, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Robert and Sharron Biller appeal a summary judgment declaring that water damage to their home was excluded from coverage under an insurance policy issued by Farmers Insurance Exchange. The Billers

argue that ambiguity in a policy term should be construed in favor of coverage. Because the subject term is unambiguous, we affirm the judgment.

BACKGROUND

¶2 On the morning of August 15, 2009, Sharron watered some shrubs and flowers using a garden hose connected to a spigot on the outside of the couple’s home. After completing this task, Sharron laid the hose on the ground. Approximately twenty-four hours later, Sharron discovered the hose was left in the “on” position. The resulting water pooled outside the house and seeped into the basement, causing damage to several personal items and interior finishes within the basement.

¶3 The Billers submitted a claim for their loss under a homeowners property and casualty insurance policy issued by Farmers. The policy provides limited coverage for water damage, but only if the damage results from “a sudden and accidental discharge, eruption, overflow or release of water.” The claim was denied based on this policy language and the Billers filed the underlying action for declaratory judgment. The parties filed competing summary judgment motions. The court granted judgment in favor of Farmers on the ground that damage to the Billers’ basement was not caused by a “sudden and accidental” discharge of water. This appeal follows.

DISCUSSION

¶4 We review a circuit court’s decision to grant summary judgment independently, applying the same methodology as the circuit court. *Fifer v. Dix*, 2000 WI App 66, ¶5, 234 Wis. 2d 117, 608 N.W.2d 740. Summary judgment is

appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).¹

¶5 Further, the construction or interpretation of an insurance policy presents a question of law that we review independently. *Hull v. State Farm Mut. Auto. Ins. Co.*, 222 Wis. 2d 627, 636, 586 N.W.2d 863 (1998). Any ambiguity in the policy language is to be construed in favor of coverage. See *Cardinal v. Leader Nat'l Ins. Co.*, 166 Wis. 2d 375, 382, 480 N.W.2d 1 (1992). The fact that a word has more than one meaning, however, does not make the word ambiguous if only one meaning comports with the parties' objectively reasonable expectations. *United States Fire Ins. Co. v. Ace Baking Co.*, 164 Wis. 2d 499, 503, 476 N.W.2d 282 (Ct. App. 1991). Where language in an insurance contract is unambiguous, we simply apply the policy language to the facts of the case. See *Grotelueschen v. American Family Mut. Ins. Co.*, 171 Wis. 2d 437, 447, 492 N.W.2d 131 (1992). In doing so, we give the policy terms their plain meaning—the meaning a reasonable person in the position of the insured would give them. See *id.*

¶6 Citing *Just v. Land Reclamation, Ltd.*, 155 Wis. 2d 737, 456 N.W.2d 570 (1990), the Billers contend that the word “sudden” from the phrase “sudden and accidental” has been interpreted to have multiple meanings. In *Just*, our supreme court held that the phrase “sudden and accidental,” as used in the pollution exclusion of a general commercial liability policy, did not necessarily have a temporal element, but merely connoted a lack of intent or understanding on

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

the part of the insured. In other words, “sudden and accidental” in the pollution exclusion included conduct that was “unexpected or unintended.” *Just*, 155 Wis. 2d at 760.

¶7 We are not persuaded, however, by the Billers’ attempt to create ambiguity by citation to a case that is distinguishable on its facts. Unlike the policy in *Just*, the present policy defines the term. Specifically, the policy provides:

A sudden and accidental discharge, eruption, overflow or release of water does not include a constant or repeating gradual, intermittent or slow release of water, or the infiltration or presence of water over a period of time. We do not cover any water, or the presence of water, over a period of time from any constant or repeating gradual, intermittent or slow discharge, seepage, leakage, trickle, collection, infiltration or overflow of water from any source, even if from the usage of [a plumbing system; heating or air conditioning system; automatic fire protections system; or household appliance], whether known or unknown to any insured.

The policy language therefore makes it clear that for coverage to exist, the “sudden and accidental” discharge must be exactly that. Under no conceivable view of the facts could the present discharge be deemed “sudden and accidental.” The Billers’ argument does not hold water.

¶8 The Billers alternatively assert that inconsistent policy provisions create ambiguity. Specifically, the Billers contend that although the policy claims to provide limited coverage for water damage, it effectively eliminates coverage for any reasonable water damage by excluding all potential sources and outcomes that water may create. We disagree. As Farmers notes, coverage would exist for water damage stemming from a burst pipe or rupture in an HVAC system. Because the term “sudden and accidental” as used in the subject policy is

unambiguous, the circuit court properly granted summary judgment in Farmers' favor.²

By the Court.—Judgment affirmed.

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

² Although Farmers' summary judgment motion was properly granted because the loss did not result from the sudden and accidental discharge of water, Farmers set forth two alternative arguments against coverage. Specifically, it contends there is no coverage under the policy because the water hose is not part of the plumbing system, and because the loss resulted from the infiltration of surface water. Were we to reach the merits of these alternative arguments, we would reject the Billers' claim that the terms "plumbing system" and "infiltration of surface water" are ambiguous, and rule against coverage for the reasons outlined in Farmers' brief.

