

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 9, 1996

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(1), 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. 95-2610

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**LEE J. PETRINA and
KATHLEEN J. PETRINA,
Husband and Wife,**

Plaintiffs-Appellants,

v.

**JAMES BARNARD and
CRYSTAL BARNARD,
Husband and Wife, and
RURAL MUTUAL INSURANCE
COMPANY,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Door County:
JOHN D. KOEHN, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Lee and Kathleen Petrina appeal a summary judgment¹ dismissing their complaint against Rural Mutual Insurance Company alleging wrongful eviction and invasion of their rights to private occupancy. They argue that the trial court erroneously interpreted the Rural Mutual Insurance Company policy. Because the trial court correctly interpreted and applied the policy, we affirm.

The underlying facts are not disputed. In 1991, the Barnards accepted from Diane and Robert Shartner an offer to purchase real estate. The real estate was farmland being used as a cherry orchard. After the Barnards accepted the Shartners' offer, they accepted a second offer from the Petrinas. The Shartners paid the purchase price to the Barnards' real estate agent and recorded with the register of deeds an affidavit of interest in the property. The Barnards, however, conveyed the property by warranty deed to the Petrinas, who took delivery of the deed and possession of the property knowing of the Shartners' prior interest.

The Shartners initiated a lawsuit against the Barnards and the Petrinas for declaration of rights. The Petrinas were also insured by Rural, which accepted tender of defense.² The lawsuit resulted in a judgment in favor of the Shartners. The judgment decreed that the Shartners were the equitable owners of the property and that the Petrinas, having accepted the conveyance with constructive and actual knowledge of the Shartners' interest, were not purchasers in good faith. The judgment voided the conveyance to the Petrinas, ordered the Barnards to refund the purchase price of \$25,000, and ordered that the Petrinas were to receive their expenses for cultivating the cherry crop, determined by an arbitrator to be \$17,545.46.

The Petrinas then commenced this action against the Barnards and Rural Mutual, which also insured the Barnards with a commercial liability policy, alleging that as a result of the Barnards' negligence and breach of warranty deed, the Petrinas were wrongfully evicted from the property and

¹ The document appealed from is denominated an order, but for purposes of this appeal we interpret it as a summary judgment.

² The Petrinas do not challenge the trial court's finding that Rural paid \$14,151.07 in defense costs for the Petrinas. The Petrinas contend, however, that they incurred attorney fees in addition to those for which they received payment.

suffered an invasion of their right of private occupancy. They seek lost profits from the cherry crop, costs in the transaction conveying the property to the Shartners, and other alleged damages.

Rural's policy with the Barnards provides:

[W]e agree to extend Section II – Coverage A, Personal Liability, to cover personal injury.

Personal injury means damages for which an **insured** is legally liable. The damages must be caused by:

....

4. wrongful entry or eviction, or other invasion of the right of private occupancy.

Summary judgment is reviewed de novo. *Park Bancorporation, Inc. v. Sletteland*, 182 Wis.2d 131, 140, 513 N.W.2d 609, 613 (Ct. App. 1994). We apply the standard set forth in § 802.08(2), STATS., in the same manner as the trial court. *City of Edgerton v. General Cas. Co.*, 184 Wis.2d 750, 764, 517 N.W.2d 463, 470 (1994). Summary judgment is rendered when there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 763, 517 N.W.2d at 764.

In this case, the only question requires the interpretation of the insurance policy and its application to an undisputed set of facts. The primary goal in interpreting insurance policies is to ascertain and carry out the true intentions of the parties. *Id.* at 779-80, 517 N.W.2d at 476. The words of the policy are to be given their plain and ordinary meaning. *Id.* at 780, 517 N.W.2d at 476.

The Petrinas argue that the Barnards' policy insures against liability due to the invasion of another's rights of occupancy of insured premises. They claim that because their right of occupancy was invaded, the policy provides coverage for their resulting damages. We disagree. First, the Petrinas fail to demonstrate that they had any rights to occupy the premises in question. To the contrary, because the Shartners were the equitable owners, the judgment established that the Petrinas had no right to occupy the premises.

Second, the Petrinās' claims arise not from their eviction from the property, which was by court order, but from the Barnards' breach of the warranty of title contained in their deed of conveyance. The meaning of an insurance policy is assessed by the standard of a reasonable person in the position of the insured. *Id.* at 780, 517 N.W.2d at 476-77. An insured's expectation of coverage may not be satisfied in contradiction to the policy language that clearly identifies the scope of coverage. *Id.* at 780, 517 N.W.2d at 477. Here, a reasonable interpretation of the plain policy language would not lead a reasonable insured to expect title insurance. Because the undisputed facts fail to support a claim for damages for wrongful entry, eviction, or other invasion of right of occupancy, the trial court properly determined that the policy did not afford coverage.³

The Petrinās also argue that the trial court erroneously concluded that the claims presented here are the same claims that were resolved in the earlier lawsuit. The Petrinās argue that the trial court failed to consider that the issues in this lawsuit arise out of the Barnards' insurance policy and that in the earlier lawsuit the Barnards' policy was not an issue. Because the Barnards' policy with Rural does not afford coverage under the undisputed facts, no further analysis is required. See *Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983) (we address only dispositive issue).

By the Court.—Judgment affirmed.

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

³ Although the trial court dismissed the Petrinās' claims against the Barnards as well as Rural, on appeal the Petrinās argue only that the trial court erroneously decided the issue of coverage. We limit our discussion accordingly.