



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

August 21, 2013

To:

Hon. David M. Bastianelli
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Kent A. Tess-Mattner
Schmidt, Rupke, Tess-Mattner & Fox, S.C.
17100 W. North Ave.
Brookfield, WI 53005-4436

Christine M. Witherill
WI Physicians Service Insurance Corp.
P.O. Box 8190
Madison, WI 53708-8190

You are hereby notified that the Court has entered the following opinion and order:

2013AP579-FT

Joseph Morrone v. Wisconsin Physicians Service Insurance Corporation (L.C. #2011CV2729)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Joseph Morrone appeals from a judgment granting dismissal on summary judgment of his complaint against Wisconsin Physicians Service Insurance Corporation (WPS). Pursuant to a presubmission conference and this court's order of April 5, 2013, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2011-12).¹ Upon review of those memoranda and the record, we affirm the judgment of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

In November 2007, Morrone applied for health insurance with WPS. On his application he disclosed that he had injured his left knee approximately two and one-half years earlier and had surgery on it.

In December 2007, WPS sent Morrone a letter stating that it had approved coverage subject to an enclosed waiver of benefit endorsement. That waiver provided in relevant part:

I, JOSEPH MORRONE, Customer No. 390904084, hereby consent that neither my WPS policy or certificate, any subsequent policy or certificate, nor any amendment thereto whenever issued, shall cover or provide benefits for care with regard to:

Joseph (self) –

Any disease, dysfunction, disorder or injury of the left knee and any complications, treatment, prosthetic device, medication, testing or surgery thereof.

Anything in the policy or certificate to the contrary notwithstanding.

I hereby agree that this endorsement shall form a part of the aforesaid policy or certificate and all subsequent policies or certificates.

...

A WPS policy or certificate is hereby issued to the applicant named above, subject to the provisions that WPS shall have no liability for any claims or claim in connection with, or on account of, the condition or conditions listed above with regard to the person or persons with whom the said condition or conditions are therein associated.

This endorsement shall be effective from January 1, 2008 and after shall apply to all policies or certificates now or henceforth issued to the applicant, and shall remain in effect until specifically rescinded in writing by Wisconsin Physicians Service Insurance Corporation.

Morrone signed and returned the waiver to WPS. He then received a policy which had as its last page a copy of the waiver. The policy was renewed every year and remains in effect.

In August 2011, Morrone re-injured his left knee and had surgery on it again. WPS refused to pay any medical bills related to this injury, and Morrone was told that his entire left knee was excluded from coverage.

Morrone subsequently filed suit against WPS, claiming breach of a health insurance policy and bad faith. Both Morrone and WPS moved for summary judgment. Ultimately, the circuit court entered judgment in favor of WPS and dismissed the matter. In doing so, the court ruled that the waiver had relieved WPS of any obligations to pay for the second surgery on Morrone's knee and was a legitimate basis for denying coverage. This appeal follows.

We review a grant of summary judgment de novo, using the same methodology as the circuit court. *Estate of Sheppard ex rel. McMorrow v. Schleis*, 2010 WI 32, ¶15, 324 Wis. 2d 41, 782 N.W.2d 85. Summary judgment is proper if there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. *See id.*, WIS. STAT. § 802.08(2).

Determining whether summary judgment was properly granted in this case requires interpretation of Morrone's insurance policy. Insurance contract interpretation is a question of law that we review de novo. *Folkman v. Quamme*, 2003 WI 116, ¶12, 264 Wis. 2d 617, 665 N.W.2d 857. We construe insurance policies to give effect to the intent of the parties as expressed in the policy language. *Id.* We interpret policy language according "to what a reasonable person in the position of the insured would have understood the words to mean." *Id.*, ¶20.

On appeal, Morrone contends that the circuit court erred in dismissing his suit against WPS. He maintains that a reasonable person in his position would have understood the waiver to be a preexisting condition limitation rather than a bar to coverage for medical care and treatment

on his left knee. Accordingly, he asks that we reverse the judgment of the circuit court and reinstate his bad faith claim.

Reviewing the insurance policy at issue, we conclude that a reasonable person in the position of Morrone would have understood the waiver to be a bar to coverage for medical care and treatment on his left knee. After all, the waiver clearly excludes coverage for any claim related to Morrone's left knee and remains in effect until specifically rescinded in writing by WPS. Because the waiver provided WPS with a legitimate basis for denying coverage in this case, the circuit court properly granted summary judgment in favor of WPS.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is affirmed.

*Diane M. Fremgen
Clerk of Court of Appeals*