



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 I

November 16, 2021

To:

Hon. Paul R. Van Grunsven
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Colin Casper
Electronic Notice

Russ J. Delury
Electronic Notice

Eric Matthew Knobloch
Electronic Notice

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

2020AP184

Lovell M. Nash v. Progressive Universal Insurance Company
(L.C. # 2018CV9548)

Before Brash, C.J., Donald, P.J., and Dugan, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Lovell M. Nash appeals the circuit court's judgment and order granting summary judgment in favor of Progressive Universal Insurance Company. He argues that the circuit court improperly granted summary judgment dismissing his case when it ruled that he was not covered by the uninsured motorist provision of his Progressive policy. We affirm.

According to the complaint, Nash was driving his car when his passenger, Hazel Haynes, grabbed the steering wheel without his permission, causing the car to leave the road and crash. Nash was hospitalized and required surgery on his leg, which was broken in the accident. Nash brought this action against Progressive, arguing that he should be covered under the uninsured

motorist provision of his Progressive car insurance policy. He contended that Haynes, who is uninsured, was operating his car without his permission when she grabbed the steering wheel while the car was in motion, and she is therefore an uninsured driver under his policy. Progressive moved for summary judgment, arguing that Nash was not entitled to coverage under the uninsured motorist provision in the policy based on the factual circumstances alleged by Nash. The circuit court granted summary judgment in favor of Progressive.

“Summary judgment will be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Driver v. Driver*, 119 Wis. 2d 65, 69, 349 N.W.2d 97 (Ct. App. 1984); WIS. STAT. § 802.08(2) (2019-20).¹ “We review a circuit court’s decision to grant summary judgment *de novo*, applying the same methodology as the circuit court.” *Fromm v. Village of Lake Delton*, 2014 WI App 47, ¶11, 354 Wis. 2d 30, 847 N.W.2d 845 (italics added).

The first step of the well-established summary methodology “requires the court to examine the pleadings to determine whether a claim for relief has been stated.” *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). “In testing the sufficiency of a complaint, we take all facts pleaded by plaintiffs and all inferences which can reasonably be derived from those facts as true.” *Id.* at 317. “The complaint should be dismissed as legally insufficient only if it is quite clear that under no circumstances can plaintiffs recover.” *Id.*

The Progressive policy provides the following with regard to uninsured motorist coverage:

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury**:

1. Sustained by an **Insured person**;
2. Caused by an accident; and
3. Arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

The policy defines an “uninsured motor vehicle” as “a land motor vehicle ... of any type ... to which no bodily injury liability bond or policy applies at the time of the accident...” The policy further states: “An ‘uninsured motor vehicle’ does not include any vehicle ... that is a **covered auto**.” The policy defines a covered auto as “any **auto** ... shown on the **declarations page**....”

The Progressive policy unambiguously defines a covered auto under the policy as any auto listed on the declarations page. Nash’s car is listed on the policy’s declarations page. Therefore, Nash’s car is a covered auto under the policy.

The Progressive policy unambiguously states that a covered auto is not an uninsured motor vehicle under the policy. Nash’s car is a covered auto under the policy, so his car is not an uninsured motor vehicle as defined by the policy. The policy provides uninsured motorist coverage for damages arising out of use of an uninsured motor vehicle. Because Nash’s car is not an uninsured motor vehicle, the uninsured motorist coverage does not apply.

Nash argues that Haynes was a non-permissive uninsured driver of his car when she grabbed the steering wheel, causing the crash. Even if Haynes were considered to be a non-permissive uninsured driver of Nash’s car, that does not change the status of Nash’s car as a covered auto under the policy. The status of Nash’s car as a covered auto means that the uninsured motorist provisions of the policy do not apply.

Upon the foregoing,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals