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**DISTRICT III/IV**

May 15, 2013

*To*:

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

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2012AP602 Donald E. Smet and Mary A. Smet v. Ronald L. Smet, Principal Life Insurance Company and Acuity, a mutual insurance company (L.C. # 2011CV592)

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

Donald Smet and Mary Smet appeal an order of the circuit court, which granted summary judgment motions filed by Secura Insurance (“Secura”) and Acuity. Based upon our review of

the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We summarily affirm.

Donald Smet was injured in an accident at the home of his brother, Ronald. For the time periods relevant to this appeal, Ronald owned and operated a business, R&S Auto Artists, Inc. ("R&S"), out of his home. On the day of the accident, Donald asked to retrieve a lawnmower he had lent to Ronald several years earlier. Ronald never used the mower, but placed it on a shelf in an outbuilding on his property. When Donald came over to retrieve the lawnmower, Ronald used a forklift to hoist Donald to reach the shelf. Donald fell and was injured.

Donald and his wife, Mary, sued Ronald, his homeowners' insurer, Secura, and his business insurer, Acuity. Acuity and Secura filed separate motions for summary judgment, and the circuit court granted both motions in a single order.[2] Donald and Mary (collectively referred to hereafter as "Donald") appealed, and Secura filed a motion to dismiss. In an order dated July 11, 2012, we granted Secura's motion and dismissed Secura as a party to the appeal.

Donald now argues that Ronald's business liability insurance policy issued by Acuity covers the injuries sustained by Donald. He asserts that Ronald is an insured of the Acuity policy and the policy provides coverage to activities occurring on the business premises. He

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[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] The appellants' brief states that the court's written order granting summary judgment did not specify the grounds for the court's decision. However, we note that the order references a motion hearing and refers to "reasons set forth on the record." No transcript of the hearing is included in the record or the appellants' appendix. It is an appellant's responsibility to present a complete record for the issues on appeal, and we assume that any missing material that is necessary for our review supports the circuit court's determination. ***Manke v. Physicians Ins. Co. of Wis., Inc.***, 2006 WI App 50, ¶60, 289 Wis. 2d 750, 712 N.W.2d 40.

further asserts that Ronald was acting within the scope of his employment when he used the forklift to help Donald retrieve the lawnmower. Acuity argues that the policy does not provide coverage because the policy limits coverage to business-related liabilities, and Ronald's actions with respect to borrowing the lawnmower and assisting Donald with retrieval of the lawnmower did not have a business purpose.

We review a grant of summary judgment by applying the same methodology as the circuit court, and our review is *de novo*. ***Pinter v. American Family Mut. Ins. Co.***, 2000 WI 75, ¶12, 236 Wis. 2d 137, 613 N.W.2d 110. Interpretation of an insurance policy presents a question of law that also is reviewed *de novo*. ***American Family Mut. Ins. Co. v. American Girl, Inc.***, 2004 WI 2, ¶23, 268 Wis. 2d 16, 673 N.W.2d 65. Our analysis begins with a determination of whether the policy makes an initial grant of coverage under the factual circumstances of the claim. ***Id.***, ¶24. If it is clear that the policy was not intended to cover the claim, the analysis ends there. ***Id.*** If the claim triggers an initial grant of coverage in the policy, we next examine the exclusions to determine whether any exclusion precludes coverage of the claim. ***Id.*** Exclusions sometimes have exceptions and, if an exclusion applies, we then look to see whether any exception to that exclusion reinstates coverage. ***Id.***

The insurance policy issued by Acuity states, in paragraph 1.a., "We will pay those sums that the insured becomes legally obligated to pay as damages because of *bodily injury, property damage* or *personal and advertising injury* to which this insurance applies." Paragraph 1.b. of the policy states that the insurance applies to bodily injury or property damage only if "(a) The bodily injury or property damage is caused by an occurrence that takes place in the coverage territory; and (b) The bodily injury or property damage occurs during the policy period." (Emphasis omitted.) On their face, these provisions appear to be a grant of coverage.

However, to determine whether Ronald is the "insured" intended to be covered by the policy, we look to how the policy defines an insured. The policy states, under a section entitled "WHO IS AN INSURED," that an individual designated in the declarations section of the policy is an insured if "you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner." We turn then to the declarations section of the policy, which names the insured as "Ronald Smet DBA R&S Auto Artist." This section makes clear that Ronald, doing business as R&S Auto Artist, is the insured.

The remaining question, then, is whether the accident occurred "with respect to the conduct of a business." The record demonstrates that the answer to this question is no. Both Donald and Ronald stated in their deposition testimony that the lawnmower belonged to Donald. Ronald stated in his deposition testimony that he borrowed the lawnmower intending to use it for the purpose of cutting grass in his ditch. He stated that, although he sometimes has customers come to the property for business purposes, he never used the lawnmower to cut the grass on the property.

Ronald then testified that he used his forklift for personal purposes as well as business purposes. He testified that, although he purchased the forklift to unload pallets for his business, when he operated the forklift on the day of the accident to help Donald reach the lawnmower, it did not relate to his business. We conclude, independently of the circuit court, that the record does not demonstrate that Ronald borrowed and retrieved the lawnmower with respect to conducting his business. Accordingly, no coverage for Donald's injuries is provided under the business insurance policy issued by Acuity to Ronald.

We also reject Donald's argument that the business liability policy issued by Acuity applies to all activities occurring on the premises where R&S conducts business. Such a reading of the policy would render the limitations on coverage specified in other portions of policy meaningless. When construing the language of an insurance policy, a construction that gives reasonable meaning to every provision of the policy is preferable to one leaving part of the language useless or meaningless. ***Frost ex rel. Anderson v. Whitbeck***, 2002 WI 129, ¶21, 257 Wis. 2d 80, 654 N.W.2d 225.

Finally, Donald argues that coverage is triggered because he was an invited guest of R&S, as opposed to a volunteer worker or employee. We need not decide this issue because, having concluded that Ronald's actions with respect to the lawnmower were not undertaken for his business, R&S, whether Donald was a guest, volunteer worker or employee of R&S is not dispositive. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (non-dispositive issues need not be addressed).

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*
*Clerk of Court of Appeals*