COURT OF APPEALS
DECISION
DATED AND FILED

April 13, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

No. 97-3671

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

DOUGLAS VAUGHN, JR., A MINOR, BY ROBERT B. ERDMANN, BERTHA WEBB AND DOUGLAS VAUGHN, SR.,

PLAINTIFFS-APPELLANTS,

PRIMECARE HEALTH PLAN, INC. AND STATE OF WISCONSIN, DEPARTMENT OF HEALTH AND FAMILY SERVICES,

PLAINTIFFS,

V.

UNITED STATES FIDELITY & GUARANTY INSURANCE COMPANY,

INTERVENOR-RESPONDENT,

ELLIS STORY, KEVIN L. WHITE, LAKESIDE BUSES OF WISCONSIN, INC., CIGNA PROPERTY AND CASUALTY INSURANCE COMPANY, CENTURY INDEMNITY COMPANY, N/K/A CONNIE LEE INSURANCE COMPANY, GENERAL STAR INDEMNITY

COMPANY AND UNITED STATES FIRE INSURANCE COMPANY,

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Douglas Vaughn, Jr., by his guardian ad litem and his parents (hereinafter, collectively "Vaughn"), appeal from an order granting summary judgment and declaring that United States Fidelity & Guaranty Insurance Company's policy does not provide coverage for claims arising from a motor vehicle accident wherein Douglas was severely injured. Vaughn claims that the trial court erred in ruling that USF&G's policy excluded coverage. Because the trial court did not err in so ruling, we affirm.

I. BACKGROUND

On May 5, 1995, Douglas was a passenger on a bus operated by Kevin L. White, and owned by Lakeside Buses of Wisconsin, Inc. Douglas was dropped off on North 12th Street in the City of Milwaukee. As he was crossing the street, he was struck in the crosswalk by another vehicle that was being driven by Ellis Story.

USF&G provided Lakeside with a general liability insurance policy. Lakeside also carried automobile liability insurance through Century Indemnity Company. Vaughn sued Story, White, Lakeside and various insurers. USF&G

moved to intervene and sought summary and declaratory judgment, alleging that its general liability insurance policy did not provide coverage to Lakeside for the Vaughn accident. The trial court granted the motion, ruling that the exclusion in USF&G's policy excluding coverage for injury "arising out of the … use … of any … auto … includ[ing] loading or unloading," operated to bar coverage. Vaughn now appeals.

II. DISCUSSION

Vaughn argues that the trial court erred in ruling that the USF&G policy did not provide coverage. He claims that the allegations in the complaint that Lakeside was negligent in "the hiring, training and supervision of its employee [White]" support a concurrent, independent cause for the accident separate from the "use of an auto." Specifically, Vaughn argues that Lakeside was negligent because it did not teach its employees to comply with a Milwaukee Public School directive, which had designated the intersection where Douglas was let off as a "no cross street." The trial court rejected this argument. The trial court did not err.

This case comes to us after a declaratory and summary judgment wherein the trial court applied the principles of contract construction to a set of undisputed facts. The standard of review under such circumstances is *de novo*. *See* ***Robert E. Lee & Assocs., Inc. v. Peters***, 209 Wis.2d 437, 446, 563 N.W.2d 546, 549 (Ct. App. 1997); ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 317, 401 N.W.2d 816, 821 (1987).

USF&G provided Lakeside with a general liability insurance policy, which provided coverage for "Bodily Injury and Property Damage" but specifically excluded coverage for: "'[b]odily injury' or 'property damage' arising

out of the ownership, maintenance, use or entrustment to others of any aircraft, 'auto' or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and 'loading or unloading.'" It is undisputed that the Lakeside bus operated by White is a covered auto, and that the street crossing was an "unloading" under the policy. Vaughn's argument relies entirely on his belief that the allegations asserting a negligent hiring, training, and supervision claim for the failure of White to prevent an attempt to cross at a "no cross" intersection provide an independent cause for this accident and do not fall into the automobile exclusion referenced above. We do not agree.

The USF&G general liability policy specifically excludes liability for damages "arising out of the ownership … use … of any … 'auto' … owned or operated by" the bus company. Although there may be situations where a covered cause of loss under a general liability policy combines with an auto accident to cause an injury, these situations are limited. *See* ***Lawver v. Boling***, 71 Wis.2d 408, 417, 422-23, 238 N.W.2d 514, 519, 521-22 (1976); ***Bankert v. Threshermen's Mut. Ins. Co.***, 110 Wis.2d 469, 239 N.W.2d 150 (1983). USF&G's policy may provide coverage if the negligent training and supervision allegations provided an independent concurrent cause of the accident, separate from the operation of the Lakeside bus. *See* ***Smith v. State Farm Fire & Cas. Co.***, 192 Wis.2d 322, 331, 531 N.W.2d 376, 380 (Ct. App. 1995). The independent concurrent cause rule provides: "Where a policy expressly insures against loss caused by one risk but excludes loss caused by another risk, coverage is extended to a loss caused by the insured risk even though the excluded risk is a contributory cause." ***Id.*** (citation omitted). "[A]n independent concurrent cause must provide the basis for a cause of action in and of itself and must not require the occurrence of the excluded risk to make it actionable." ***Id.*** at 332, 531 N.W.2d at 380.

Therefore, the question before us is whether the negligent supervision and training allegations are independent from the excluded risk, i.e., the use of the Lakeside bus. We conclude that the negligent supervision and training allegations do not constitute an independent concurrent cause. Without the operation of the Lakeside bus, these allegations are irrelevant because, absent the operation of the bus, this accident could not have occurred. The supervision and training allegations relate to Lakeside's failure to ensure that its drivers comply with the "no cross" directive issued by Milwaukee Public Schools, designating the intersection where the accident occurred as one where children should not be let off. This allegation or theory of liability is intimately connected with the type of coverage that is expressly excluded. For a driver to comply with the no cross directive, he or she necessarily must be operating the bus.

We are not persuaded by Vaughn's suggestion that this case is somehow governed by ***Miller v. Wal-Mart Stores, Inc.***, 219 Wis.2d 250, 580 N.W.2d 233 (1998), which establishes the tort of negligent hiring, training or supervision. The instant case is distinguishable because it involves the operation of a motor vehicle, without which the accident causing injury would not have occurred. Conversely, ***Miller*** did not involve the use of a motor vehicle. Further, Vaughn's reliance on ***Snouffer v. Williams***, 106 Wis.2d 225, 316 N.W.2d 141 (Ct. App. 1982) is similarly misplaced. ***Snouffer*** is also distinguishable from the instant case because the injury in ***Snouffer*** was not in any way connected to the operation of the vehicle. The injury was caused when a third party fired a gun at two passengers who had exited the vehicle, knocked over the third party's mailbox and re-entered the vehicle. *See* ***id.*** at 226-27, 316 N.W.2d at 142. Thus, we conclude that the trial court did not err when it ruled that USF&G's general liability policy did not provide coverage.

By the Court.—Order affirmed.

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