COURT OF APPEALS
DECISION
DATED AND FILED

February 12, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP12 **Cir. Ct. No. 2011CV752**

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

MARK A. MELBY,

PLAINTIFF,

V.

METROPOLITAN PROPERTY AND CASUALTY INSURANCE COMPANY D/B/A METLIFE AUTO & HOME,

DEFENDANT-RESPONDENT,

JAMES BUCKMASTER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Affirmed*.

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

¶1 HIGGINBOTHAM, J. This appeal arises out of injuries sustained by Mark A. Melby, while installing a shelf in the garage of James Buckmaster's home. Buckmaster operates an auto parts business out of his garage, where he stores zinc dichromate, an acid used in his business, in a five-gallon bucket. Melby was injured when he stepped on the bucket and his foot pushed through the lid of the container holding the acid, causing Melby to suffer chemical burns on his lower leg and foot. Melby filed this personal injury action against Buckmaster alleging negligence in several respects. Economy Premier Insurance Company and Metropolitan Property and Casualty Insurance Company, which insured Buckmaster's home, moved for summary judgment on the issues of coverage, indemnification, and the duty to defend. The circuit court granted summary judgment to the insurance companies on the ground that the business exclusions in both insurance policies applied, and therefore there was no coverage, and no accompanying duty to defend or indemnify Buckmaster.[1]

¶2 On appeal, Buckmaster contends that the business exclusions in both insurance policies are ambiguous, and therefore each policy should be construed in favor of coverage. Specifically, Buckmaster contends that the undisputed material facts, as applied to the exclusion, may be reasonably viewed in at least two ways and that there are two possible effects of the exclusions, one of which would not preclude coverage. Based on these contentions, Buckmaster argues that the exclusions should be narrowly construed in favor of coverage. Buckmaster also

[1] Economy's homeowner's policy contains a "business activities exclusion" to the general grant of liability under the policy. Metropolitan's excess policy refers to its business exclusion clause as a "business pursuits" exclusion. When referring to a specific policy exclusion, we will refer to it as indicated in the policy. However, we will refer to the exclusions generally as "business exclusions" when we discuss the exclusions together.

argues that the undisputed material facts give rise to conflicting reasonable inferences as to the cause of Melby's injuries, and therefore the circuit court erred in granting summary judgment to the insurers.

¶3 We conclude that the business exclusions in both Economy's homeowner's policy and Metropolitan's excess policy are unambiguous and that, under the plain language of the business exclusions, the exemptions apply to bar coverage for Buckmaster's liability for Melby's alleged injuries. We also conclude that Buckmaster's summary judgment argument is undeveloped. Accordingly, we affirm.

BACKGROUND

¶4 In 2008, Buckmaster employed Melby to perform various landscaping and home improvement duties on his residential property. One of these home improvement projects included building a shelf in Buckmaster's garage. Within the garage, Buckmaster operates an auto parts business where he reworks carburetors and distributors, and reprograms computers on computer-controlled cars. Buckmaster uses a diluted zinc dichromate solution to color the carburetors he works on to make them look new. Buckmaster stored the zinc dichromate in a plastic container about the size of a five-gallon bucket, with a plastic lid over the top, inside the garage.

¶5 As part of the home improvement project, Buckmaster asked Melby to hang brackets from an existing shelf in the garage. While installing a second bracket, Melby stepped on the bucket containing the zinc dichromate and his foot broke through the plastic lid of the bucket, causing chemical burns to Melby's lower leg and foot.

¶6 At the time of Melby's injury, Buckmaster's property was insured through Economy and Metropolitan. Buckmaster had a homeowner's and an automobile insurance policy issued by Economy and an excess insurance policy issued by Metropolitan.

¶7 Melby sued Buckmaster and Metropolitan. In his complaint, Melby claimed that Buckmaster was negligent for storing the zinc dichromate in an unmarked container, in instructing Melby to install the shelf above the hazardous material, and in failing to warn Melby that the bucket contained a hazardous substance. By stipulation and order, Economy was added as a party. Economy and Metropolitan moved for declaratory and summary judgment based on the business exclusions in the policies.

¶8 The circuit court granted Economy's and Metropolitan's motions for declaratory and summary judgment. The court found that the material facts were undisputed and that, based on these facts, the business exclusions of each policy precluded coverage for Buckmaster's liability for Melby's injuries. Thus, the court concluded, neither Economy nor Metropolitan had a duty to defend or indemnify Buckmaster, and the court dismissed Economy and Metropolitan from the lawsuit. Buckmaster appeals.

DISCUSSION

¶9 We review a circuit court's grant of summary judgment using the same methodology as the circuit court. ***State v. Bobby G.***, 2007 WI 77, ¶36, 301 Wis. 2d 531, 734 N.W.2d 81. Summary judgment is appropriate when the affidavits and other submissions show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2013-14). "[W]e draw all reasonable inferences from the evidence in

the light most favorable to the non-moving party." ***Burbank Grease Servs., LLC v. Sokolowski***, 2006 WI 103, ¶40, 294 Wis. 2d 274, 717 N.W.2d 781.

¶10 The issue on appeal is whether the business exclusions of Buckmaster's homeowner's and excess policies apply to preclude coverage in this case. Interpretation of an insurance contract is a question of law, which we review de novo. ***Day v. Allstate Indem. Co.***, 2011 WI 24, ¶25, 332 Wis. 2d 571, 798 N.W.2d 199. We determine whether an insurance policy provides an initial grant of coverage by examining the facts of the claim and the language of the policy. ***Id.***, ¶26. "If the claim triggers the initial grant of coverage, we determine next whether any … exclusions preclude coverage for the claim." ***Id.*** Exclusions in an insurance policy are narrowly construed against the insurer. ***Id.***, ¶29. However, exclusions that are clear and unambiguous will be enforced. ***Id.***

¶11 Our task in interpreting an insurance policy is "to determine and carry out the intentions of the parties as expressed by the language of the insurance policy." ***Id.***, ¶27. "[W]e interpret policy language according to its plain and ordinary meaning as understood by a reasonable person in the position of the insured." ***Hirschhorn v. Auto-Owners Ins. Co.***, 2012 WI 20, ¶22, 338 Wis. 2d 761, 809 N.W.2d 529. Insurance policy language is ambiguous "if it is susceptible to more than one reasonable interpretation." ***Danbeck v. American Family Mut. Ins. Co.***, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150. Ambiguities in an insurance contract are to be resolved against the insurer who drafted it and in favor of the insured. ***Smith v. Atlantic Mut. Ins. Co.***, 155 Wis. 2d 808, 811, 456 N.W.2d 597 (1990). "However, where no such ambiguity exists, the rule of strict construction against insurers is not applicable. To do otherwise would be '… to bind an insurer to a risk which it did not contemplate and for which it was not

paid.'" ***Bertler v. Employers Ins. of Wausau***, 86 Wis. 2d 13, 17, 271 N.W.2d 603 (1978) (citations omitted).

I. Economy's Business Activities Exclusion

¶12 Economy issued a homeowner's policy to Buckmaster, which provides a general grant of coverage for injury to others for which the law holds Buckmaster responsible because of an accident. The policy contains a business exclusion, which reads in pertinent part:

> **Business. We** do not cover **bodily injury** or **property damage** arising out of or in connection with **your business** activities. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed or implied to be provided because of the nature of the **business**.

¶13 The policy defines "business" as:

> [A]ny full or part time activity of any kind engaged in for economic gain, and use of any part of any premises for such purposes ….

¶14 The insurance policy does not define the phrase "business activities." Thus, we may consult a recognized dictionary to discern the common and ordinary meaning of the phrase "business activities" or either of its component words. *See* ***Weimer v. Country Mut. Ins. Co.***, 216 Wis. 2d 705, 722, 575 N.W.2d 466 (1998).

¶15 However, we need not dwell on the word "business," because there is no dispute that Buckmaster's work with auto parts in his garage was a business. Our inquiry focuses on the phrase "business activities," or the word "activities." A pertinent definition of "activity" is "an occupation, pursuit, or recreation in which a person is active … (business activities)." WEBSTER'S THIRD NEW INT'L

DICTIONARY 22 (unabridged ed. 1993). The words "in connection with" are also not defined in the policy. As pertinent here, the word "connection" is defined as "a relationship; association; … causal relationship." WEBSTER'S NEW COLLEGE DICTIONARY 309 (unabridged ed. 2005).

¶16 The words "'arising out of' in liability insurance policies are very broad, general, and comprehensive; and are ordinarily understood to mean originating from, growing out of, or flowing from. All that is necessary is some causal relationship between the injury and the event not covered." ***Rufener v. State Farm Fire & Cas. Co.***, 221 Wis. 2d 500, 506-07, 585 N.W.2d 696 (Ct. App. 1998) (citation omitted).

¶17 Based on the plain terms of the business exclusion in Buckmaster's homeowner's policy, the undisputed facts, and the available definitions for those terms, we conclude that the only reasonable reading of the exclusion is that it excludes liability coverage for bodily injury when there is a "causal relationship" between the injury and the insured's business activities, including the storage of materials to be used by the insured in his or her business activities, such as the zinc dichromate in this case, giving rise to liability. This construction is in keeping with the broad, general, and comprehensive meaning courts have given the words "arising out of," and the common and ordinary meaning of "in connection with." *See* ***id.***

¶18 Buckmaster's argument regarding any ambiguity in the exclusion is in large part unclear. He refers to the following definition of "activities": "a specific deed, action, function or sphere of action: *social activities.*" THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1966). From this, he appears to attempt to suggest that storing material for use in a business is not an

"act" or a "deed." As such, according to Buckmaster, his storage of the zinc dichromate was not a business activity. However, if this is what he means to argue, Buckmaster provides us with no reason to reach the conclusion that the act of storage is not an activity. And, once it is recognized that storing material for use in a business is a business activity, as we think it plainly is, then there is nothing left of Buckmaster's argument, given the broad meaning of the exclusion's phrase "arising out of." Indeed, Buckmaster does not develop an argument related to this phrase until his reply brief. The policy plainly excludes coverage for injuries that has a "causal relationship" with an insured's business, which, as a matter of common sense, must include materials used by the insured in the business and stored in readiness for that use.

¶19 In arguing that the business activities exclusion is ambiguous, it appears that Buckmaster relies on the theories of liability pled in Melby's complaint. Buckmaster appears to argue that a proper construction of the business activities exclusion focuses on Buckmaster's alleged negligent conduct, rather than on whether the source of injury arose out of or was connected to an insured's business. In support, Buckmaster relies on this court's decisions in ***Schinner v. Gundrum***, 2012 WI App 31, 340 Wis. 2d 195, 811 N.W.2d 431, and ***Newhouse v. Laidig, Inc.***, 145 Wis. 2d 236, 426 N.W.2d 88 (Ct. App. 1988). Buckmaster's reliance on these cases is misplaced.

¶20 In both cases, this court addressed a non-insured premises exclusion in a personal liability insurance policy. The issue presented in these cases was whether the exclusion should be construed to preclude coverage if the injury occurred on the non-insured premises, or rather whether the injury was caused by a condition on the premises for which the insured may be liable. *See* ***Schinner v. Gundrum***, 340 Wis. 2d 195, ¶28; ***Newhouse***, 145 Wis. 2d at 240. This court

interpreted the non-insured premises exclusion in both cases to require that the injury result from a condition of the premises for which the insured may be liable. ***Id.*** However, the supreme court reversed ***Schinner***, rejecting this court's interpretation of the non-insured premises exclusion, and abrogated this court's similar interpretation in ***Newhouse***. ***Schinner***, 2013 WI 71, ¶¶88-89, 349 Wis. 2d 529, 833 N.W.2d 685. Nonetheless, Buckmaster does not direct our attention to any case that applies a similar analysis to a business activities exclusion, and we are not aware of any.

¶21 Buckmaster's second argument regarding ambiguity is very difficult to track. He appears to argue that the *effect* of the business activities exclusion is ambiguous and uncertain and therefore the exclusion is ambiguous. As best we can tell, Buckmaster argues that because there are two reasonable alternative interpretations of the exclusion's effect, the business activities exclusion is ambiguous. We do not address this argument. Buckmaster fails to make a cogent argument that assists us in understanding the contentions he is making. More to the point, Buckmaster does not present a fully developed argument on this topic. Consequently, we do not consider this argument any further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we do not consider on appeal undeveloped arguments).

II. Metropolitan's Business Exclusion Clause

¶22 As we indicated, Metropolitan issued an excess personal policy to Buckmaster, which also contained a business exclusion. The Metropolitan business exclusion states that the policy does not apply to injury "due to **business pursuits** or **business property** unless they are covered by an **underlying policy**." Buckmaster argues that this exclusion does not apply for the same reasons that the

business activities exclusion in Economy's homeowner's policy does not apply to deny coverage. We reject Buckmaster's contentions for the same reasons we reject his arguments regarding Economy's business activities exclusion. Furthermore, Buckmaster fails to raise any new arguments for why the business pursuits exclusion does not apply in this case or establish any differences between the policies. Accordingly, we do not consider this argument any further.

III. Summary Judgment

¶23 Buckmaster contends that the circuit court erred by granting summary judgment on two grounds. First, he argues that the court erred in finding as a matter of law that Melby's injury was caused by the zinc dichromate. He argues that the determination of cause of an injury in a negligence action is a factual question and is best left for the jury to decide. In support, Buckmaster cites ***Morgan v. Pennsylvania Gen. Ins. Co.***, 87 Wis. 2d 723, 735-36, 275 N.W.2d 660 (1979). However, Buckmaster does not fully develop this argument, and therefore we decline to address it further. *See* ***Pettit***, 171 Wis. 2d at 646-47.

¶24 Buckmaster's second argument on this topic is also undeveloped. He appears to argue that Economy's business activities exclusion and Metropolitan's business pursuit exclusion are ambiguous and therefore these exceptions should be narrowly construed to provide coverage. However, as we addressed above, we conclude that the plain language of the policies are clear and unambiguous. As mentioned previously, Buckmaster fails to establish ambiguity and his arguments on this topic are undeveloped. Accordingly, we will not address his arguments further. *See* ***id.***

CONCLUSION

¶25 In sum, we conclude that Melby's injuries arose out of or was in connection with Buckmaster's business activities. Thus, the business exclusions in Economy's homeowner's insurance policy and in Metropolitan's excess policy apply and operate to preclude coverage for Buckmaster's alleged liability for Melby's injuries. Accordingly, we affirm.

By the Court.—Order affirmed.

Not Recommended for publication in the official reports.