

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 22, 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. 98-1999**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**PAUL B. RUBENALT, AND HEATHER F. RUBENALT,**

**PLAINTIFFS,**

**v.**

**DALE E. REEVE,**

**DEFENDANT-APPELLANT,**

**AMERICAN FAMILY MUTUAL INS. CO.,**

**INTERVENOR-RESPONDENT.**

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APPEAL from an order of the circuit court for Dane County:  
ROBERT DE CHAMBEAU, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

PER CURIAM. Dale E. Reeve appeals from an order holding that his insurer, American Family Mutual Insurance Co., was not required to defend him in this matter. We affirm.

Reeve is seeking to have American Family pay for his defense of a suit by his neighbors, the Rubenalts. The parties agree that the duty to defend is determined by applying the policy language to the plaintiffs' complaint, and that this is a question of law which we review de novo.

The Rubenalts' first amended complaint alleged that Reeve maintained nuisances in the form of barking dogs and garbage stacked against their fence. More specifically, the complaint alleged that Reeve's dogs had barked unreasonably loudly for several years; that he had been found guilty of violating a certain village ordinance; that the dogs were a nuisance; that after the Rubenalts filed this suit, Reeve began to stack garbage along their fence, creating another nuisance; that Reeve disregarded repeated pleas from the Rubenalts to abate "the nuisance"; and that Reeve's acts were in conscious disregard of some unspecified court order. The complaint further alleged that the nuisances caused them certain personal injuries, reduced their property value, and caused them to move.

The trial court held that there was no duty to defend. The parties agree that American Family must defend if this allegation meets the policy definition of "occurrence" and is not otherwise excluded. One facet of that definition is that an occurrence must be an "accident." On appeal, Reeve concedes that the garbage allegation does not trigger the duty to defend, but argues that the duty is triggered by the dog allegation.

Reeve argues that the dog portion of the complaint alleges only negligent conduct. He argues that, based on the complaint, any injury caused by

the barking was unforeseen, unplanned, and unintended. He argues that the complaint does not allege the Rubenalts ever discussed the situation with him, or that he was aware the barking could or did cause the injuries complained of, because the allegation that he disregarded pleas to abate “the nuisance” related to the garbage issue. As to the allegation that he was found guilty of violating the ordinance, which relates to barking dogs, Reeve argues that the ordinance does not require that the alleged harbinger of such an animal be given any notice. In other words, he appears to be arguing that the complaint does not necessarily allege that he knew he had been found guilty.

We reject these arguments. The only reasonable reading of the complaint is that Reeve knew about the Rubenalts’ concern with the barking dogs, and knew that he had been found guilty of violating the ordinance, but nevertheless did not take sufficient measures to keep the dogs from barking. We are satisfied that this does not allege an “accident,” and therefore is not covered by American Family’s policy.

*By the Court.*—Order affirmed.

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

