COURT OF APPEALS
DECISION
DATED AND FILED

June 11, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1804 **Cir. Ct. No. 2013CV118**

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

LIBERTY MUTUAL FIRE INSURANCE COMPANY,

PLAINTIFF-RESPONDENT,

V.

LYNN HAINES AND TERESA HAINES,

DEFENDANTS-APPELLANTS,

DAVID GRINDLE AND PAMELA GRINDLE,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed*.

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

¶1 PER CURIAM. Lynn and Teresa Haines appeal the circuit court's grant of summary judgment in favor of Liberty Mutual Fire Insurance Company

on Liberty Mutual's action for declaratory judgment as to whether a farmowners insurance policy issued by Liberty Mutual to David and Pamela Grindle provides liability coverage for injuries sustained by Lynn while operating a tractor owned by the Grindles. The circuit court determined as a matter of law that the policy does not provide liability coverage for Lynn's injuries and entered judgment in favor of Liberty Mutual. For the reasons discussed below, we affirm.

BACKGROUND

¶2 Lynn sustained injuries when the tractor he was using to load a rotary hoe onto a trailer tipped over. The tractor and the rotary hoe were owned by the Grindles, who were insured under a farmowners policy issued by Liberty Mutual.

¶3 Liberty Mutual brought suit against the Haineses and the Grindles, seeking a declaratory judgment that the policy does not provide liability coverage for Lynn's injuries. Both Liberty Mutual and the Haineses moved for summary judgment. Liberty Mutual asserted that exclusions to the policy's liability coverage preclude coverage for the injuries Lynn sustained in the accident. The Haineses argued that no exclusion applies to preclude coverage.

¶4 The circuit court granted Liberty Mutual's motion for summary judgment and denied the Haineses' motion. The court concluded that Lynn was an "insured" under the policy and that coverage for his injuries is barred under an exclusion that precludes coverage for injuries sustained by an "insured." The Haineses appeal. Additional facts will be discussed below as necessary.

DISCUSSION

¶5 The Haineses contend that the circuit court erred in granting Liberty Mutual's motion for summary judgment and in denying their motion for summary judgment.

¶6 We review a circuit court's grant of summary judgment de novo. ***Hardy v. Hoefferle***, 2007 WI App 264, ¶6, 306 Wis. 2d 513, 743 N.W.2d 843. A party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no material fact in dispute and the movant is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶7 Whether Liberty Mutual or the Haineses are entitled to summary judgment depends on the interpretation of the policy at issue in this case. The interpretation of an insurance policy ordinarily presents a question of law that this court decides independently of the circuit court. ***Acuity v. Chartis Specialty Ins. Co.***, 2015 WI 28, ¶21, 361 Wis. 2d 396, 861 N.W.2d 533. Policy terms are to be interpreted "'as they would be understood from the perspective of a reasonable person in the position of the insured,'" and we construe coverage exclusions narrowly against the insurer. ***Id.***, ¶¶24-25 (quoted source omitted). When the language of the policy is unambiguous, we "will not rewrite the policy by interpretation or impose obligations the parties did not undertake." ***Id.***, ¶24. However, when language in an insurance policy is ambiguous, the ambiguities are to be resolved in favor of coverage. ***Id.***

¶8 To determine whether an insurance policy provides coverage for a particular loss, we undertake a three-part inquiry. First, we examine the facts of the insured's claim to determine whether the claim falls within the policy's initial

grant of coverage. ***Id.***, ¶28. "If it is clear that the policy was not intended to cover the claim asserted, the analysis ends there." ***American Family Mut. Ins. Co. v. American Girl, Inc.***, 2004 WI 2, ¶24, 268 Wis. 2d 16, 673 N.W.2d 65. However, if the claim triggers the initial grant of coverage, we next examine whether any of the policy's exclusions apply to preclude coverage of the claim. ***Acuity***, 361 Wis. 2d 396, ¶28. Exclusions are narrowly construed against the insurer if the effect of the exclusion is uncertain, and we analyze the exclusions separately. ***American Family Mut. Ins. Co.***, 268 Wis. 2d 16, ¶24. If an exclusion applies, we then look to see whether an exception to that exclusion applies to reinstate coverage. ***Acuity***, 361 Wis. 2d 396, ¶28**.**

¶9 The policy here provides liability coverage to its insureds under certain circumstances. Relevant to the present case is the following provision: "'We' pay, up to 'our' 'limit,' all sums for which any 'insured' is liable by law because of 'bodily injury' … caused by an 'occurrence.'" The parties do not dispute on appeal that Lynn's injuries fall within the initial grant of coverage. Their arguments focus instead on whether one or more exclusion applies to preclude Lynn's injuries from coverage. Accordingly, there is no factual dispute that there is an initial grant of coverage, and we turn to the question of whether one or more exclusion precludes coverage.

¶10 Liberty Mutual contends that coverage for Lynn's injuries from the accident is precluded by two exclusions. The first exclusion precludes liability coverage for "'bodily injury' to any 'insured.'" The second exclusion precludes liability coverage for "'bodily injury' … which results directly or indirectly from: … activities related to the 'business' of any 'insured.'"

¶11 Relevant to this case are the policy's definitions of "insured" and "business." An "[i]nsured" is defined by the policy as including a "persons using … vehicles … owned by any … [individual named as an insured on the policy's declaration] and to which this policy applies (This does not include persons using or caring for vehicles … in the course of 'business' or without the owner's consent.)." "Business," in turn, is defined as follows:

> "Business" means a trade, a profession, or an occupation, all whether full or part time. This includes the rental of property to others.
>
> "Business" includes services regularly provided by any "insured" for the care of others and for which an "insured" is compensated. A mutual exchange of like services is not considered compensation.
>
> "Business" does not include … "farming."

¶12 As noted, under the first exclusion, coverage is precluded for bodily injury to an "insured," who includes anyone using a vehicle owned by the Grindles and to which the policy applies. An "insured" does not include anyone using a vehicle "in the course of 'business.'" Thus, under the first exclusion, coverage is *not* precluded for injuries sustained by an individual using the covered vehicle "in the course of 'business.'" However, under the second exclusion, coverage is precluded for injuries sustained by an individual that result from activities related to any such business.[1]

[1] As Liberty Mutual notes in its respondent's brief, these exclusions reflect that the "Liberty Mutual policy at issue is a farm liability policy," which "provides farm-related coverage and not commercial liability coverage for other business pursuits." We take the Haineses' failure to file a reply brief as conceding this point. *See* ***Fischer v. Wisconsin Patients Comp. Fund***, 2002 WI App 192, ¶1 n.1, 256 Wis. 2d 848, 650 N.W.2d 75 (argument asserted by the appellant and not disputed by the respondent may be taken as admitted).

¶13 The parties devote substantial argument to the issue of whether Lynn was using the Grindles' tractor "in the course of 'business.'" The Haineses argue that the summary judgment submissions establish that Lynn and David had a rental arrangement concerning Lynn's use of the tractor on the day of the accident, and that Lynn was operating the tractor by virtue of that rental agreement at the time Lynn was injured. The Haineses argue that a reasonable person would read the policy as including David and Lynn's rental agreement in the policy's definition of "business." Liberty Mutual argues that the summary judgment submissions do not establish that Lynn was renting the tractor from David, noting that Lynn and David were good friends and no evidence was presented that any money was exchanged between Lynn and David for Lynn's use of the tractor. Liberty Mutual further argues that even if the submissions establish that Lynn rented the tractor from David, the submissions do not establish that renting farm equipment was David's "trade, [] profession, or [] occupation," or that renting farm equipment was an activity that David "regularly provided," facts that Liberty Mutual argues are required in order for an activity to be considered "business" under the policy.

¶14 We need not decide whether Lynn was using the tractor "in the course of 'business'" because, as we explain, resolution of this dispute is not necessary to conclude that one of the two exclusions bars coverage for the injuries that Lynn sustained when using the tractor.

¶15 It is undisputed that Lynn was using the Grindles' tractor with David's permission. If, in addition to being permissive, Lynn's use of the tractor *was not* "in the course of 'business,'" he is an "insured" under the policy and the first exclusion applies to preclude coverage for his injuries.

¶16 If Lynn's use *was* "in the course of 'business,'" he is not an insured under the policy and the first exclusion does not apply to preclude coverage. However, if Lynn's injuries occurred "in the course of 'business,'" as they must in order for the first exclusion not to apply, those injuries necessarily resulted either directly or indirectly from an activity related to that "business" and, therefore, the second exclusion precludes coverage.

¶17 Thus, regardless of whether Lynn's use of the tractor was "in the course of 'business,'" Lynn's injuries are precluded from coverage under one of the two exclusions relied upon by Liberty Mutual. In other words, whether Lynn's use was "in the course of 'business'" is not material to the issue of coverage.

¶18 Having determined that an exclusion applies to preclude coverage for Lynn's injuries, the next step in our analysis is to determine whether an exception applies to reinstate coverage. The Haineses do not direct this court to an exception to the exclusion that would reinstate coverage and our review of the policy has not revealed one. Accordingly, we conclude that the policy does not provide liability coverage for the injuries sustained by Lynn in the accident and that summary judgment in favor of Liberty Mutual was appropriate.

CONCLUSION

¶19 For the reasons discussed above, we affirm, albeit based on different reasoning than that used by the circuit court.

By the Court.—Judgment affirmed.

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