COURT OF APPEALS
DECISION
DATED AND FILED

November 8, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 99-3020

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

LORENA M. GRIBOU,

PLAINTIFF-APPELLANT,

V.

ADAM J. HALL, KENNETH AND ELIZABETH HALL AND GENERAL CASUALTY COMPANY OF WISCONSIN,

DEFENDANTS,

PROGRESSIVE NORTHERN INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Racine County: ALLAN B. TORHORST, Judge. *Affirmed.*

Before Nettesheim, Anderson and Snyder, JJ.

¶1 PER CURIAM. Lorena M. Gribou was injured in an automobile accident on February 23, 1998. She subsequently sought underinsured motorist (UIM) benefits under an insurance policy issued by Progressive Northern Insurance Company to Genesis Homes, Inc. Lorena's mother, Nancy Gribou, was an officer and the sole shareholder in Genesis Homes. Lorena was also a Genesis Homes officer.

¶2 The trial court granted summary judgment and dismissed Lorena's complaint against Progressive on the ground that the policy issued to Genesis Homes provided no UIM benefits to Lorena. We agree and affirm the trial court's judgment.

¶3 When reviewing a grant of summary judgment, we apply the same methodology as the trial court and decide de novo whether summary judgment was appropriate. *See* ***Coopman v. State Farm Fire & Cas. Co.***, 179 Wis. 2d 548, 555, 508 N.W.2d 610 (Ct. App. 1993). If the pleadings set forth a claim for relief and a material issue of fact, our inquiry shifts to the moving party's affidavits or other proof to determine whether a prima facie case for summary judgment has been presented. *See* ***Grams v. Boss***, 97 Wis. 2d 332, 338, 294 N.W.2d 473 (1980). If the moving party has made a prima facie case, the affidavits or other proof of the opposing party must be examined to determine whether there exist disputed material facts, or undisputed material facts from which reasonable alternative inferences may be drawn, sufficient to entitle the opposing party to a trial. *See* ***id.***

¶4 The interpretation of an insurance contract also involves this court's independent review. *See* ***C.L. v. School Dist. of Menomonee Falls***, 221 Wis. 2d 692, 697, 585 N.W.2d 826 (Ct. App. 1998). Insurance policies are controlled by the same rules of construction that govern other contracts. *See* ***Meyer v. City of***

Amery, 185 Wis. 2d 537, 543, 518 N.W.2d 296 (Ct. App. 1994). The goal is to ascertain the intentions of the contracting parties. *See* ***Rohloff v. Heritage Mut. Ins. Co.***, 179 Wis. 2d 165, 170, 507 N.W.2d 112 (Ct. App. 1993). Insurance policies are to be construed to give their language its common and ordinary meaning as that language would be understood by a reasonable person in the position of the insured. *See* ***C.L.***, 221 Wis. 2d at 697. Ambiguities in coverage must be construed in favor of coverage, while exclusions must be narrowly construed against the insurer. *See* ***Meyer***, 185 Wis. 2d at 543. However, words or phrases are ambiguous only when they are reasonably susceptible of more than one reasonable construction, and when a policy's terms are plain they cannot be rewritten by construction. *See* ***id.***

¶5 The parties dispute whether Lorena's claim should be determined under the UIM endorsement, Form 2654, which has a revision date of 1-97 (the 1-97 endorsement), or under the UIM endorsement, Form 2654, which had a revision date of 5-95 (the 5-95 endorsement). Both parties agree that under the 1-97 endorsement, Lorena is not entitled to UIM benefits. Progressive further contends that even if the 5-95 endorsement applies, Lorena is covered only as a driver, not for purposes of UIM benefits.

¶6 We need not determine which endorsement applies to Lorena's claim because under both, UIM benefits were properly denied. The insurance policy issued by Progressive in 1996 listed Genesis Homes as the named insured and Nancy as a driver. The policy was renewed in 1997 and 1998. In 1998, Lorena obtained her driver's license and was added to the policy. Like her mother, she was listed on the policy as a driver.

¶7 The policy defines "you" as:

> a. if the policy is issued in the name of an individual, the person shown in the Declarations as the named insured; or
> b. the organization shown in the Declarations as the named insured.

¶8 Under both the 1-97 and 5-95 UIM endorsements to the policy, Progressive agreed to pay for damages "which an insured is legally entitled to recover." However, in the 1-97 endorsement, "insured" is defined as:

> a. You.
> b. If you are a person, any relative.
> c. Any other person occupying your insured auto.

¶9 The 5-95 endorsement defined an "insured" as:

> a. You, or a relative.
> b. Any other person occupying your insured auto.

¶10 Although there are punctuation differences between the two endorsements, both endorsements defined a "relative" as:

> "Relative" means, if you are a person, any other person living in the household in which you reside, who is related to you by blood, marriage, or adoption, including a ward or foster child.

¶11 Lorena concedes that under the 1-97 endorsement, UIM benefits are provided to a relative only if the named insured is a person. However, she contends that the 5-95 endorsement contains no such limitation. She contends that she is either entitled to coverage as a matter of law under the 5-95 endorsement or, at a minimum, the language of the 5-95 endorsement must be viewed as ambiguous, defeating Progressive's motion for summary judgment.

¶12 We disagree with both of Lorena's contentions. Although the definition of "insured" in the 5-95 endorsement does not include the words "if you are a person," it incorporates the definition of "relative," which includes the "if

you are a person" limitation. Because Genesis Homes is the named insured on the policy, it is the "[y]ou" referred to in the 5-95 endorsement for this policy. While the policy also provides coverage for "a relative," by policy definition "relative" means a relative of a person. The benefits afforded by the 5-95 endorsement are thus not materially different from those provided by the 1-97 endorsement. The 5-95 endorsement unambiguously provides coverage to "a relative" only if the named insured is a person. It provides no coverage for relatives if the named insured is a corporation.

¶13 Contrary to Lorena's contention, nothing in Wisconsin case law compels a different result. Lorena relies on ***Carrington v. St. Paul Fire & Marine Insurance Co.***, 169 Wis. 2d 211, 219-20, 485 N.W.2d 267 (1992), in which the court concluded that wards or foster children were members of the family of a corporation which operated a group home in which the children resided. However, the court's holding in ***Carrington*** was directly dependent upon the policy language, which defined the insured as "[y]ou" and "a member of your family," but did not limit members of families to members of the family of an individual or person. *See* ***id.*** In contrast, in ***Reed v. General Casualty Co.***, 216 Wis. 2d 205, 211, 576 N.W.2d 73 (Ct. App. 1997), a policy was issued to a corporation and defined "insured" as "[y]ou and if you are an individual, any family member." Based upon this qualifying language, this court held that coverage extended to a family member only if the named insured was an individual. *See* ***id.***

¶14 The language in the policy issued by Progressive to Genesis Homes is similarly limited. It is irrelevant that in the 5-95 endorsement, the limitation is set forth in the definition of "relative," rather than in the definition of "insured."

By using the term "relative" in the definition of "insured," the language limiting relatives to relatives "of a person" is incorporated into the definition of "insured."[1]

¶15 Lorena also contends that even if she is not a relative of Genesis Homes, there is a material issue of fact as to whether her mother informed Progressive that she wanted Lorena to be included on the policy as a named insured, rather than simply a named driver. Lorena contends that if Nancy requested that she be included as a named insured, an oral contract was created that is enforceable.

¶16 This argument fails because nothing in the summary judgment record supports a determination that Nancy requested that Lorena be added to the policy as a named insured. Nothing in the affidavits and deposition testimony submitted in the summary judgment record indicates that Nancy expressly asked Progressive to add Lorena as a named insured, nor does Lorena make such an argument. Rather, Lorena argues that a reasonable inference from Nancy's deposition testimony is that Nancy wanted Lorena to have full benefits under the policy, which would require that she be a named insured.

¶17 Initially, we note that liability may be premised only on what Nancy requested, not on what she might have wanted. *See* ***Appleton Chinese Food Serv.,***

[1] Lorena also contends that summary judgment should have been denied because Progressive based its motion only on the 1-97 endorsement, and thus failed to make a prima facie case for summary judgment. We disagree. Even Lorena concedes that under the 1-97 endorsement, she was not a relative entitled to UIM benefits. Although Lorena alleged in opposition to summary judgment that the provisions of the 1-97 endorsement could not be considered because the endorsement was not served on Genesis Homes before the accident, her defense was based on her claim that she was a relative of Genesis Homes under the 5-95 endorsement. Progressive disputed her interpretation of the 5-95 endorsement and contended that she was not a relative entitled to UIM benefits under either endorsement. Because Progressive was correct, its motion for summary judgment was properly granted.

Inc. v. Murken Ins., Inc., 185 Wis. 2d 791, 803, 519 N.W.2d 674 (Ct. App. 1994). In her deposition, Nancy testified that she called Progressive to have Lorena added as a second driver in 1998, before the accident. She testified that she indicated to Progressive that she wanted Lorena "as a second driver." Nancy indicated that she was the first driver and that she wanted Lorena added as a second driver because someone had told her that "a commercial policy needed everyone to be addressed." When asked what she meant by needing "everyone to be addressed," Nancy testified that she meant:

> Whoever was driving the car, you know. In other words, she was a second driver on my policy.… I wanted to be sure that she was specifically named.

¶18 Nancy further indicated that this matter was of concern to her at the time she called Progressive because Lorena was either getting or had recently gotten her driver's license. She also expected Lorena to be driving the Geo Prism that was covered under the policy.

¶19 The only inference that can be drawn from Nancy's testimony is that Nancy wanted and requested that Lorena be added as a second driver on the policy. This was accomplished by Progressive. Nothing in the testimony permits an inference that Nancy requested that Lorena be added as a named insured under the policy, particularly since Nancy herself was not a named insured under the

policy. Only Genesis Homes was listed as a named insured under the policy. Like Lorena, Nancy was simply a named driver.[2]

¶20 Lorena also contends that a material issue of fact arises from Nancy's testimony that neither she nor Genesis Homes ever received a copy of the policy booklet defining "you" as "the organization shown in the Declarations as the named insured." Lorena contends that because Genesis Homes requested and paid for coverage for her, in the absence of the policy booklet she could reasonably expect that "you" in the policy referred to the corporate officers, including her. However, like her preceding argument, this argument fails because the only request made by Nancy was to include Lorena as an additional driver. Because nothing in the record supports a finding that Nancy asked to add Lorena as a named insured, Lorena could not reasonably expect that "you" in the policy referred to her.

¶21 Because no material issues of fact existed and because the policy clearly and unambiguously provided coverage to Lorena only as a driver, summary judgment was properly granted by the trial court.

---

[2] Lorena argues that even before her mother called Progressive to add her to the policy, the policy provided liability coverage when a vehicle insured under the policy was driven with consent. She argues that as an officer of Genesis Homes, she could give herself consent to drive an insured vehicle. She contends that adding her to the policy as a driver therefore provided her with no more liability coverage than she had before the addition was made. She contends that Progressive's interpretation of the 5-95 endorsement means that Genesis Homes paid an additional premium for no additional coverage, an unreasonable construction which should be avoided.

This argument fails because under the policy all drivers were required to be identified. Adding Lorena as a new driver after she received her driver's license created an additional risk to Progressive which justified an additional premium. It cannot be inferred from the charging of an additional premium that Lorena was added to the policy as a named insured rather than simply as an additional driver.

By the Court.—Judgment affirmed.

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