COURT OF APPEALS
DECISION
DATED AND FILED

March 9, 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. 97-0549

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

PETER J. STEEN AND JENNY STEEN,

PLAINTIFFS-APPELLANTS,

V.

AMERICAN FAMILY MUTUAL INSURANCE CO.,

DEFENDANT-RESPONDENT,

ATLANTA CASUALTY CO., KRISTEN K. OLIGNY, ABC INSURANCE CO., GILBERT T. KNUDSEN AND WESTERN NATIONAL MUTUAL INS. CO.,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: FRANK T. CRIVELLO, Judge. *Reversed.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Peter J. Steen and Jenny Steen appeal from the trial court's judgment dismissing their action against American Family Mutual Insurance Company ("American Family"). They argue that the trial court erred in concluding that the uninsured motorist provisions of their American Family auto insurance policies did not provide coverage for their losses following a car accident. Under the supreme court's recent decision in ***Hull v. State Farm Mutual Automobile Insurance Co.***, 222 Wis.2d 627, 586 N.W.2d 863 (1998), they are correct. Accordingly, we reverse.

The facts are undisputed. Peter Steen sustained injuries when the semi-tractor trailer he was driving was struck by a car driven by Kristen Oligny, and owned by Gilbert Knudsen. The Steens alleged that Oligny's driving was negligent in several ways, and that Knudsen was negligent in several ways, including "equipping [his car] with tires lacking sufficient tread or traction." Oligny was insured; Knudsen was not.[1]

The Steens sought coverage from their insurer, American Family, for damages caused by what their policies referred to as "an uninsured motor vehicle," defined as a motor vehicle "[n]ot insured by a bodily injury liability bond or policy at the time of the accident." American Family moved for summary judgment, maintaining that no uninsured motorist coverage was available to the Steens. The trial court granted American Family's motion concluding that, under ***Hemerley v. American Family Mutual Insurance Co.***, 127 Wis.2d 304, 379 N.W.2d 860 (Ct. App. 1985), *overruled by* ***Hull***, 222 Wis.2d at 632, 586 N.W.2d at 865, an

[1] The complaint alleged that Knudsen was uninsured, but also alleged that he was insured under an unknown policy. For purposes of appeal, however, the parties assume that Knudsen was uninsured.

"uninsured motor vehicle" under § 632.32(4)(a)1, STATS.,[2] is a vehicle to which no insurance applies, from either the owner or the operator. Thus, in the instant case, the trial court concluded that because Oligny had insurance that applied to Knudsen's vehicle while she was driving it, Knudsen's car was not an "uninsured motor vehicle."

As the supreme court reiterated, "construction of insurance policy language and the interpretation of [§ 632.32(4), STATS.] … present questions of law" subject to *de novo* review. ***Hull***, 222 Wis.2d at 636, 586 N.W.2d at 866. Further, our review of a trial court's grant of summary judgment is *de novo*. ***Grosskopf Oil, Inc. v. Winter***, 156 Wis.2d 575, 581, 457 N.W.2d 514, 517 (Ct. App. 1990).

Circumstances similar to those of the instant case were presented in ***Hull***. *See* ***Hull v. State Farm Mut. Auto. Ins. Co.***, No. 97-0659, unpublished slip op. (Wis. Ct. App. Nov. 12, 1997), *rev'd*, 222 Wis.2d 627, 586 N.W.2d 863 (1998). This court, concluding that ***Hemerley*** controlled, affirmed the trial court's declaratory judgment in favor of the State Farm, but also expressed the "belie[f] that ***Hemerley*** was decided incorrectly." ***Hull***, slip op. at 7. On review, the

[2] Section 632.32(4)(a)1, STATS., states:

> **(4)** REQUIRED UNINSURED MOTORIST AND MEDICAL PAYMENTS COVERAGES. Every policy of insurance subject to this section that insures with respect to any motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall contain therein or supplemental thereto provisions approved by the commissioner:
>
> (a) *Uninsured motorist*. 1. For the protection of persons injured who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom, in limits of at least $25,000 per person and $50,000 per accident.

supreme court agreed and overruled ***Hemerley***. *See* ***Hull***, 222 Wis.2d 632, 645-47, 586 N.W.2d at 865, 870-71. The supreme court declared that uninsured motorist coverage applies "whenever either the owner or the operator of a motor vehicle is allegedly negligent and is not covered by liability insurance." ***Id.*** at 632, 586 N.W.2d at 865. The supreme court explained:

> In ***Hemerley***, the sole alleged tortfeasor, the driver of the vehicle, was insured. In a case like the present one, however, there is more than one potential tortfeasor: the owner, for the allegedly negligent maintenance of the vehicle, and the driver, for the allegedly negligent use of the vehicle. In this suit, Hull seeks UM coverage for the allegedly negligent maintenance of the truck by its uninsured owner. The only way in which to place Hull in the same position she would have been in, had the uninsured motorist been insured, is to require that UM coverage be provided to her. In the absence of UM coverage for the owner's alleged negligence, Hull would be denied a source of compensation for the owner's alleged negligence, even though the driver's alleged negligence would be covered under the driver's Milwaukee Mutual insurance policy. Application of the ***Hemerley*** definition of "uninsured motor vehicle" would deny Hull UM coverage for the owner's alleged negligence, because of the driver's insured status. Consequently, we agree with the court of appeals in this case that the ***Hemerley*** definition of "uninsured motor vehicle" contravenes the legislative purpose of Wis. Stat. § 632.32(4) in the multiple tortfeasor situation presented in this case.

Id. at 645-46, 586 N.W.2d at 870-71.

Similarly, here, the Steens alleged not only that Oligny was negligent in her operation of Knudsen's car, but also that Knudsen was negligent in failing to properly maintain his car. Further, it is undisputed that Knudsen was uninsured. Thus, under ***Hull***, American Family's uninsured motorist provisions covered the Steens because Knudsen was "the owner … of a motor vehicle" who was "allegedly negligent and [was] not covered by liability insurance." ***Id.*** at 648, 586 N.W.2d at 871.

By the Court.—Judgment reversed.

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