

**COURT OF APPEALS
DECISION
DATED AND FILED**

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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. 97-3492

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

FEDERATED MUTUAL INSURANCE COMPANY,

PLAINTIFF-APPELLANT,

v.

PARTS DISTRIBUTING INC.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
FREDERICK P. KESSLER, Reserve Judge. *Affirmed.*

CURLEY, J. Federated Mutual Insurance Company appeals from an order dismissing its small claims action against Parts Distributing Inc. The trial court's order followed a remand by this court directing the trial court to make specific findings of fact with respect to its previous finding that Parts Distributing was not liable for insurance premiums generated by the issuance of new policies by Federated. Federated contends the trial court failed to follow the mandate of

this court and that the trial court erred in finding that there was never any agreement between the parties for insurance coverage for the disputed three-month period. This court is satisfied with the trial court's findings. Since the trial court's rationale for its ruling is supported by the record, the order is affirmed.

I. BACKGROUND.

On January 1, 1994, Ronald Haidinger acquired Parts Distributing. The previous owners advised him that they had paid the premiums for business, commercial and umbrella insurance policies for the company through May 1, 1994. Shortly after his purchase, Haidinger called Federated's agent, Gary Reynolds, and indicated his wish to continue the policies. According to Haidinger, during this conversation and a subsequent conversation with Reynolds, he was never told that Federated would cancel the policies and issues new policies requiring higher premiums. Some time during the first week of March 1994, Federated notified Haidinger that it had canceled the original policies retroactive to January 1, 1994. Later, Haidinger received a letter containing a refund check for the premiums paid on the old policies for the months of January, February and March 1994. Near the end of March, Reynolds delivered new policies to Haidinger which required Parts Distributing to pay premiums \$4000 higher than the old policies. After some initial negotiations to see if the premiums could be lowered by dropping coverage on several automobiles no longer being used by Parts Distributing, Haidinger refused to pay Federated the higher premiums for the months of January, February, and March 1994, and eventually obtained other insurance. Federated then sued Parts Distributing for the premium amounts.

Following a bench trial, the trial court rendered judgment in favor of Parts Distributing, stating: "I think it would be unjust to ask Mr. Haidinger to pay

that increase in premium; and, therefore, I will grant judgment for the defendant.” Federated appealed that decision and this court remanded the matter back to the trial court and directed the court to supply us with a more detailed explanation for its decision. We noted that the trial court could have premised its decision on one of three possibilities. First, the trial court may have erroneously believed that Federated never refunded the premiums to the old policies, and thus, not required Parts Distributing to pay any amount over the premium amounts. Second, the trial court may have considered the refund in its analysis and believed that Federated issued Parts Distributing no new insurance; thus, Parts Distributing would owe nothing to Federated. Third, the trial court may have taken note of the premium refunds and the issuance of the new policies, but may have chosen not to require Parts Distributing to pay the higher premiums because Federated did not follow the cancellation notice requirements set out in § 631.36, STATS.

After remand, the trial court issued its decision on August 25, 1997, reaffirming its original decision and directing Parts Distributing’s counsel to prepare findings of fact and conclusions of law. In its decision, the trial court found there was no insurance between the parties for the months of January, February and March 1994, and consequently, that Parts Distributing was not legally obligated to pay the premiums. Federated now seeks a reversal, claiming that it is entitled to the \$3100 premium amount because the trial court failed to follow this court’s directive to enter specific factual findings and legal conclusions and because the trial court’s reasoning is flawed.

II. ANALYSIS.

Federated contends that the trial court failed to follow this court's directive, and thus, that this court should examine the trial transcript and enter judgment in its favor. We decline this invitation because the trial court has fulfilled this court's directive and adopted one of the several interpretations set out in the earlier decision. The trial court's most recent order states: "Haidinger never entered into any agreement with Federated Mutual at the price they are seeking. It would be inequitable to compel his payment after they canceled the first period. I conclude no coverage of policy existed between the parties during that three-month period."¹ Implicit in the trial court's decision is its determination that Haidinger was unaware that the company was planning on canceling the old policies and issuing new policies at a higher cost until some time in March 1994. As a result of the cancellation notice's retroactivity to January 1, 1994, and Haidinger's decision not to accept the new policies at the increased cost, Parts Distributing was left without any insurance coverage for the months of January, February and March 1994.

Federated argues that it had a contract to provide insurance to Parts Distributing until May 1, 1994, and Haidinger was neither a party to the original insurance contract nor was the contract made to benefit him. Thus, Federated argues Haidinger could not have expected the premium amounts to remain the same and Parts Distributing should be required to pay the increased premium amounts. Federated, however, begs the question. Certainly Federated had the

¹ The trial court did err in stating that the refund amounts went to the old owners. It is undisputed that the refund amounts went to Haidinger; however, this fact does not alter the analysis because, as the owner of the company, he is entitled to any assets of the company, including refunds on insurance policies.

right to cancel the policy and to request additional sums for the new policies, but what Federated refuses to acknowledge is that once the company decided to cancel the old policies, Haidinger was under no obligation to accept the new policies at the higher rates. In order for Parts Distributing to be responsible for the new premiums, the parties would have had to contract for the new insurance. Here, no contract exists for the new insurance policies. It is axiomatic that every contract contain the elements of an offer, acceptance and consideration. *See NBZ, Inc. v. Pilarski*, 185 Wis.2d 827, 837, 520 N.W.2d 93, 96 (Ct. App. 1994). When Federated canceled the old policies, Parts Distributing's legal obligation to pay under the old contract was extinguished. The new policies, at a higher rate, constituted an offer. Parts Distributing, however, did not accept the offer. Rather, upon being presented with the new policies at an increased rate, Haidinger contacted the agent and tried to negotiate a lower premium. When the company responded with a lower amount after removing from the policies several vehicles no longer used in the business, Haidinger was still not satisfied and sought alternative quotes from other insurance companies. He eventually advised Federated that he was not interested in coverage under the new policies. Federated argues that since the policies were issued, Parts Distributing was obligated to pay the premiums. But the issuance of new policies does not, standing alone, constitute a contract between the parties. Haidinger decided against coverage with Federated. Thus, under these facts, there was never the necessary acceptance or mutual meetings of the minds between Haidinger and Federated to constitute a contract and obligate Parts Distributing to pay the premiums for the three-month period.

Admittedly, this situation is unusual because Federated did not cancel the old policies and request payment for the new policies until the policy

period was almost over. The original policies were retroactively canceled as of January 1, 1994, and the new policies presented to Haidinger some time in mid-March would have covered the same time frame. Parts Distributing was in a much better position to assess its need for insurance once the covered period was almost over than it would have been had Federated alerted Haidinger of its decision at the beginning of the three months, but this was a result of Federated's actions, not Haidinger's. Federated's delay in communicating its intent to cancel the old policies and apprising Haidinger of the new premiums placed Haidinger in a far different bargaining position than he would have been at the beginning of the period. Federated's waiting until almost two weeks before the expiration of the covered period to both cancel the old policies and raise the premiums on the new ones gave Parts Distributing an almost risk-free option of simply foregoing any insurance coverage for that time period. Federated, however, was responsible for these conditions. The bottom line is that the trial court correctly found that there was never any contract between the parties for the purchase of the new policies at the higher rate. The order is affirmed.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

