

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 7, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1526

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

**HELENA FEDDERS AND THE ESTATE OF MARK FEDDERS,
BY HELENA FEDDERS, SPECIAL ADMINISTRATOR,**

PLAINTIFFS-RESPONDENTS,

v.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

DEFENDANT-APPELLANT,

RYAN STEARNS,

DEFENDANT,

RICHARD STEARNS AND SUSAN STEARNS,

**DEFENDANTS-THIRD-
PARTY PLAINTIFFS,**

v.

RAYMOND PITTS,

THIRD-PARTY DEFENDANT-

APPELLANT.

APPEAL from an order of the circuit court for Racine County:
ALLAN B. TORHORST, Judge. *Dismissed.*

Before Brown, P.J., Nettesheim and Snyder, JJ.

¶1 NETTESHEIM, J. We previously granted the petition filed by American Family Mutual Insurance Company (American Family) for leave to appeal a nonfinal order. After further consideration, we conclude that we improvidently granted the petition. We dismiss the appeal and remand to the trial court for further proceedings. Because the parties have expended a great deal of time and effort in presenting this case, we briefly explain our holding. *See State v. Castillo*, 213 Wis. 2d 488, 489-90, 570 N.W.2d 44 (1997).

¶2 Mark Fedders was killed when a vehicle operated by Ryan Stearns, the seventeen-year-old son of Susan and Richard Stearns, struck his vehicle. Susan had sponsored Ryan's driver's license. American Family had issued a liability insurance policy to the Stearnses covering the vehicle in the accident, and it paid the policy limits on this policy. However, Helena Fedders, Mark's surviving spouse, and his estate also made claims against two additional policies issued to the Stearnses covering two other motor vehicles not involved in the accident. American Family refused payment on these policies.

¶3 The estate and Helena (Fedders) commenced this action against American Family and the Stearnses. On April 20, 1998, Judge Wayne J. Marik entered an order dismissing Fedders's action against American Family, ruling that the two policies did not provide coverage for the accident. The order, however,

allowed the Stearnses sixty days to amend their pleadings and to name additional parties. Thereafter, the Stearnses filed a cross-claim against American Family seeking reformation of the insurance policy and related relief. If successful on these claims, the Stearnses would obtain increased liability coverage. By a third-party complaint, the Stearnses also alleged negligence against the American Family agent who issued the policies.

¶4 Fedders appealed Judge Marik's order. On October 6, 1998, we dismissed the appeal on jurisdictional grounds. We held that the order was not final because American Family was still in the case as a defendant to the Stearnses' cross-claim. Fedders then filed an amended complaint that, for the most part, echoed the Stearnses' third-party claims against American Family. As with Fedders's original complaint, American Family moved to dismiss this amended complaint. American Family also sought a protective order against Fedders's discovery demands. In the meantime, this case was assigned to Judge Allan B. Torhorst. On June 14, 1999, Judge Torhorst entered an order denying American Family's motion to dismiss Fedders's amended complaint and request for the protective order.

¶5 That brings us to the present matter. American Family filed a petition for leave to appeal Judge Torhorst's interlocutory order. In its petition, American Family argued that Fedders, as nonparties to the insurance contract, did not have standing to seek reformation of the insurance policy, to claim third-party benefits under the policy or to claim negligence against the American Family agent. We granted the petition on July 26, 1999.

¶6 On August 11, 1999, after we had granted American Family's petition for leave to appeal, Judge Torhorst entered an order dismissing the

Stearnses' cross-claim against American Family and third-party complaint against the American Family agent. Fedders and the Stearnses then filed notices of cross-appeal asking that we review Judge Marik's April 20, 1998 order determining that the two American Family policies did not provide coverage for the accident and Judge Torhorst's August 11, 1999 order dismissing the Stearnses' cross-claim against American Family and third-party complaint against the American Family agent.

¶7 In a published opinion, *Fedders v. American Family Mutual Insurance Co.*, 230 Wis. 2d 577, 601 N.W.2d 861 (Ct. App.), *review denied*, 2000 WI 2, 231 Wis. 2d 376, 607 N.W.2d 292 (Wis. Nov. 17, 1999) (No. 99-1526) (*per curiam*), we held that once leave to appeal has been granted, any other interlocutory order is appealable only by leave of this court, not by direct cross-appeal. *See id.* at 579. Alternatively construing the notices of cross-appeals as petitions for leave to appeal the nonfinal orders, we held that the petitions were untimely as to Judge Marik's April 20, 1998 earlier order and otherwise failed to satisfy the criteria set out in WIS. STAT. § 808.03(2) (1997-98) as to Judge Torhorst's August 11, 1999 order. *See Fedders*, 230 Wis. 2d at 585-86. Although we declined to review the August 11 order, we directed the parties to address in their briefs whether that order rendered the interlocutory appeal moot.¹

¶8 In their briefs to this court, the parties agree that the interlocutory appeal issues are not moot. We agree. However, after a review of the parties' briefs and in light of the trial court proceedings subsequent to our acceptance of

¹ We issued this directive by an order issued the same day our opinion in *Fedders v. American Family Mutual Insurance Co.*, 230 Wis. 2d 577, 601 N.W.2d 861 (Ct. App.), *review denied*, 2000 WI 2, 231 Wis. 2d 376, 607 N.W.2d 292 (Wis. Nov. 17, 1999) (No. 99-1526) (*per curiam*), was released.

this case, it appears that Fedders's ability to state their claims against American Family may be related to, or dependent upon, the Stearnses' corresponding ability to state similar claims against American Family. While the Stearnses' claims have been litigated in the trial court, they are not presently before us. In the meantime, other issues continue to pend between the parties in the trial court.

¶9 We conclude that we should not decide this case in a piecemeal fashion. *See K.W. v. Banas*, 191 Wis. 2d 354, 357, 529 N.W.2d 253 (Ct. App. 1995). The correctness of the trial court's ruling denying American Family's motion to dismiss and for a protective order depends on whether Fedders have standing to assert their claims against American Family. This issue may depend on whether the Stearnses have valid claims against American Family. Fairness to all concerned and the interests of judicial economy dictate that these matters should be addressed in one capsulated proceeding. Moreover, our holding carries no undue prejudice to American Family. A stay is not justified merely because litigation will continue in the absence of appellate court relief. *Cf. State ex rel. Jefferson v. Roraff*, 44 Wis. 2d 250, 258, 170 N.W.2d 691 (1969); *see also* MICHAEL S. HEFFERNAN ET AL., APPELLATE PRACTICE AND PROCEDURE IN WISCONSIN § 9.2 (2d ed. 1995).

By the Court.—Appeal dismissed.

Not recommended for publication in the official reports.

