COURT OF APPEALS
DECISION
DATED AND FILED

January 6, 2000

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-1655-FT

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

STEVEN JOSEPHSON AND DIA JOSEPHSON,

PLAINTIFFS-APPELLANTS,

V.

AMERICAN FAMILY INSURANCE GROUP,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County: JOHN J. PERLICH, Judge. *Affirmed.*

¶1 DYKMAN, P.J.[1] Steven and Dia Josephson appeal from an order dismissing their small claims action against American Family Insurance Group. The Josephsons argue that the trial court erred in determining that their

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1997-98) and expedited under WIS. STAT. RULE 809.17 (1997-98).

homeowner's insurance policy did not cover damages caused by water or faulty construction. Because the policy excluded such coverage, we affirm.

BACKGROUND

¶2 In May 1998, Steven and Dia Josephson contracted to have a fireplace installed in the basement of their house. In order to ventilate the fireplace, their contractor installed a snorkel tube that extended from the fireplace through the foundation of the house up to a height of two-and-one-half feet above ground level. During a rainstorm a few days after installation, the snorkel tube funneled water into the fireplace and into the Josephsons' basement, soaking the carpet near the fireplace and in another room. The contractor determined that the snorkel tube caused the flooding and, in an attempt to solve this problem, dug in the region of the snorkel tube, performed additional caulking and installed a window well. However, during a rainstorm a few days later, more water entered the Josephsons' basement, again through the snorkel tube and fireplace. The contractor's insurance company, Pekin Insurance, made an offer of settlement, but the Josephsons felt that its offer was too low. They sued American Family, their homeowner's insurance carrier. The trial court, in a small claims proceeding, dismissed the action upon finding that their insurance policy precluded coverage for damage caused by surface water and by water below the surface. The Josephsons appeal.

ANALYSIS

¶3 The construction of language in an insurance policy involves questions of law that we review de novo. *See* ***Herwig v. Enerson & Eggen***, 98 Wis. 2d 38, 39, 295 N.W.2d 201 (Ct. App. 1980), *aff'd*, 101 Wis. 2d 170, 303 N.W.2d 669 (1981). If no ambiguity appears in an insurance contract, its plain

meaning controls the result. *See* ***Kremers-Urban Co. v. American Employers Ins. Co.***, 119 Wis. 2d 722, 735-36, 351 N.W.2d 156 (1984). When an insurance policy is unambiguous, it should not be rewritten to constrain an insurer to a risk it was unwilling to cover and for which it was not compensated. *See* ***Limpert v. Smith***, 56 Wis. 2d 632, 640, 203 N.W.2d 29 (1973). Parties are free to enter into insurance contracts that limit and specify the coverage afforded, provided the terms do not violate state law or public policy. *See* ***Rural Mut. Ins. Co. v. Peterson***, 134 Wis. 2d 165, 170, 395 N.W.2d 776 (1986). "A genuine ambiguity arises when the phrasing of a policy is so confusing that the average policyholder cannot make out the boundaries of the coverage." ***Bulen v. West Bend Mut. Ins. Co.***, 125 Wis. 2d 259, 264, 371 N.W.2d 392 (Ct. App. 1985).

¶4 The Josephsons' claim the flooding damages were covered because the water was no longer surface water when it damaged the carpeting and other personal property in their basement. We disagree. The insurance contract clearly precludes coverage for damages resulting from both surface water and from water below the surface. In the section of the policy entitled "Exclusions—Section I," Part A provides:

> We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.
>
> ….
>
> 9. Water Damage, meaning:
>
> a. flood, surface water, waves, tidal water or overflow of a body of water, from any cause….
>
> b. water from any source which backs up through sewers or drains, or water which enters into and overflows or accidentally discharges from within a sump pump … or
>
> c. regardless of its source, water below the surface of the ground.

¶5 The policy issued by American Family is unambiguous. A contract may be considered ambiguous if its terms are susceptible to more than one reasonable interpretation. *See* ***Wilke v. First Fed. Savs. & Loan Ass'n***, 108 Wis. 2d 650, 654, 323 N.W.2d 179 (Ct. App. 1982). In this case, the policy is not susceptible to more than one reasonable interpretation because it unmistakably precludes coverage for damage resulting from surface water and water below the surface. The Josephsons nonetheless assert that the trial court erred when it concluded the policy was unambiguous.

¶6 The Josephsons contend the trial court should have applied the doctrine of reasonable expectations, an equitable doctrine which applies in circumstances where there are ambiguities in the terms of coverage. In applying the doctrine of reasonable expectations, an ambiguity in an exclusionary clause is to be strictly construed against the insurer. *See* ***Patrick v. Head of the Lakes Coop. Elec. Ass'n***, 98 Wis. 2d 66, 69, 295 N.W.2d 205 (Ct. App. 1980). While the Josephsons correctly note that the doctrine of reasonable expectations may be used to resolve contractual ambiguities, the doctrine does not apply here because the policy is unambiguous.

¶7 The Josephsons further maintain the trial court erred in not addressing Part C2 of the section of the policy entitled "Exclusions—Section I," which they claim covers the damage caused by their contractor's negligence. Part C2 provides:

> We do not insure for loss caused by any of the following.
>
> ….
>
> 2. Planning, Construction, or Maintenance, meaning faulty, inadequate or defective:
>
> a. construction, reconstruction, repair, remodeling or renovation;

> b. materials used in construction, reconstruction, repair, remodeling or renovation;
>
> c. design, workmanship or specifications;
>
> ….
>
> of part or all of the insured premises or any other property.

¶8 Notwithstanding this clear language, the Josephsons claim that American Family wrongly interpreted their policy in denying coverage under Part C2. Specifically, they maintain that this clause excludes "workmanship," but not the "ensuing damage that results from the negligent act of a contractor."

¶9 We see no difference between claiming that damage resulted from a negligent act and claiming that workmanship was faulty. In either case, the loss was necessarily caused by a negligent act. Thus, the Josephsons' claim that the damage was caused by a contractor's negligence falls directly under the policy's provision reading: "We do not insure for loss caused by …. [p]lanning, [c]onstruction or [m]aintenance, meaning faulty, inadequate or defective ... design, workmanship or specifications …." Accordingly, Part C2 of the exclusions section affords the Josephsons no coverage for the damage to their basement.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)(4) (1997-98).