COURT OF APPEALS
DECISION
DATED AND FILED

August 2, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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.

Appeal No. 2015AP806 **Cir. Ct. No. 2013CV235**

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

KATHY L. OKROLEY,

PLAINTIFF-APPELLANT,

V.

DORO, INC., UNITED FIRE & CASUALTY COMPANY, HUMANA INSURANCE COMPANY AND TERRY L. BURCHELL,

DEFENDANTS-RESPONDENTS,

UNITED STATES CENTERS FOR MEDICARE & MEDICAID SERVICES AND ABC INSURANCE,

DEFENDANTS,

FALL CREEK MUTUAL INSURANCE COMPANY,

INTERVENING DEFENDANT,

1ST AUTO CASUALTY INSURANCE COMPANY,

INTERVENING DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Trempealeau County: JOHN A. DAMON, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Kathy Okroley appeals a summary judgment determining 1st Auto & Casualty Insurance Company had no duty to indemnify or defend Terry Burchell under a business auto policy for Okroley's slip-and-fall claim. We conclude a completed operations exclusion in the policy unambiguously precluded coverage for Okroley's personal injuries and affirm the judgment.

¶2 On December 22, 2012, Okroley slipped and fell on black ice in the parking lot of a Hardee's restaurant in Osseo. The previous day, Burchell had removed snow from the parking lot, pursuant to a verbal agreement with the lot's owner, Doro, Inc. The agreement required Burchell to plow snow in the parking lot when at least 1.25 inches of snow fell. Burchell was not to plow if less than 1.25 inches of snow fell, and he was not to salt or sand the parking lot unless restaurant management requested it. When Burchell left the job at approximately 4:45 p.m. on the day preceding the accident, the lot was cleared to his satisfaction and no one asked Burchell to return to the premises. Burchell did not return to the site until a week later when there was another snowfall exceeding 1.25 inches.

¶3 Okroley sued Doro, and Burchell was subsequently added as a defendant pursuant to an amended complaint alleging negligent removal of ice and snow. Burchell was the named insured under 1st Auto's business auto insurance policy, and therefore 1st Auto intervened. The circuit court granted 1st Auto's motion for summary judgment, concluding a completed operations exclusion in the policy precluded coverage for Okroley's personal injuries. Specifically, the

policy excluded coverage for claims "arising out of your work after that work has been completed or abandoned." The court found Burchell's work was completed the day prior to Okroley's slip and fall, and Burchell was under no duty to continually inspect the parking lot after he completed the snow plowing. The court noted Burchell was not asked to return to the premises, and he did not in fact return again until a week later, when there was another snowfall exceeding 1.25 inches. The court concluded the completed operations exclusion therefore applied to preclude coverage under the 1st Auto policy and granted the summary judgment motion. Okroley now appeals.

¶4 Summary judgment shall be rendered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2013-14). The grant of summary judgment and the interpretation of an insurance contract are questions of law we review independently. ***Danbeck v. American Family Mut. Ins. Co.***, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150; ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). Where the language of the policy is unambiguous, the policy should not be rewritten by construction to bind the insurer to a risk it was unwilling to cover, and for which it was not paid. *See* ***Stuart v. Weisflog's Showroom Gallery, Inc.***, 2008 WI 86, ¶20, 311 Wis. 2d 492, 753 N.W.2d 448. An otherwise unambiguous provision is not rendered ambiguous solely because it is difficult to apply the provision to the facts of a particular case. ***Id.*** An insurance policy's terms should be interpreted as they would be understood by a reasonable person in the position of the insured. ***Id.***, ¶18.

¶5 Okroley argues the circuit court erroneously applied the completed operations exclusion in the 1st Auto policy at issue in the present case. The exclusion provides:

> **B. Exclusions**
>
> This insurance does not apply to any of the following:
>
> > **10. Completed Operations**
> >
> > "Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.
> >
> > In this exclusion, your work means:
> >
> > a. Work or operations performed by you or on your behalf; and
> >
> > b. Materials, parts or equipment furnished in connection with such work or operations.
> >
> > ….
> >
> > Your work will be deemed completed at the earliest of the following times:
> >
> > (1) When all of the work called for in your contract has been completed.
> >
> > (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
> >
> > (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
> >
> > Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

¶6 Okroley insists "all of the work called for" in Burchell's contract was not completed "since Burchell was working for Doro under an ongoing

services contract that required Burchell to work whenever 1.25 inches of snow fell ….” Okroley insists Burchell’s snow-removal responsibility for Doro constituted “a single ongoing contract performed periodically on different dates,” and the work was therefore not completed within the meaning of the policy exclusion.

¶7 We disagree. In the absence of another snowfall in excess of 1.25 inches, Burchell had no further duties with respect to the premises. Burchell had indisputably finished all snow plowing operations the day prior to Okroley’s injury, and he was not otherwise obligated to return to the premises prior to Okroley’s injuries. Burchell’s snow removal responsibility was completed before Okroley’s slip and fall in the Hardee’s parking lot, and the completed operations clause unambiguously excluded from coverage the risks that form the basis of Okroley’s cause of action.

¶8 Okroley’s reliance on ***Lumbermens Mutual Casualty Co. v. Town of Pound Ridge***, 362 F.2d 430 (2d Cir. 1966), is misplaced. In that case, the Town of Pound Ridge was sued by the driver of a vehicle and the estate of the passenger, for injuries and death claimed to have resulted from the Town’s failure to properly remove snow and ice and maintain a road. ***Id.*** at 431. The Town was insured under a comprehensive general liability policy under which Lumbermens agreed “to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person and caused by accident.” ***Id.*** “Similar coverage was provided for property damage liability.” ***Id.*** The policy at issue in the present case is a business auto policy, not a commercial general liability policy. Burchell’s business auto policy covered liability resulting from the “ownership, maintenance or use of covered ‘autos.’”

Burchell did not injure Okroley while Burchell was plowing snow at the restaurant. We reject Okroley's attempt to create ambiguity where none exists and transform a business auto policy into a comprehensive general liability policy.

¶9 Perhaps more importantly, the operations of the Town in ***Lumbermens*** involved a course of continuing work that entailed recurring inspections and other activities. ***Id.*** at 433. In that case, the court found "the operation of keeping snow and ice off the road where the accident occurred was still in progress." *See* ***id.*** The court noted the town highway superintendent drove over the road frequently to determine whether sanding or snow removal was necessary, and he had gone over the scene of the accident twice on the day of the accident, once in the morning and again a few hours before the accident. ***Id.***

¶10 Okroley argues "the point of ***Lumbermens*** is that work to be performed under a continuing services arrangement is not completed while the relationship continues and recurring activity takes place, even if 'no men or equipment were at work on the scene at the time of the accident.'" However, the present case did not involve recurring activities of the type considered in ***Lumbermens***. The operation of plowing snow in the parking lot where the accident occurred was not still in progress. Burchell was not required to return to inspect or ensure the parking lot remained free from snow and ice. Burchell's obligation was simply to plow snow if and when 1.25 inches or more fell. As of 4:45 p.m. on December 21, 2012, Burchell had cleared the parking lot of snow, and all the work required by the verbal contact with Doro was completed; there was nothing left for Burchell to do prior to Okroley's accident. The circuit court properly granted summary judgment.

By the Court.—Judgment affirmed.

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