

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 28, 1996

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0535

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

TERINA P., a minor by her guardian ad litem,
MARK L. KRUEGER, and her father,
DAVID P.,

Plaintiffs-Appellants,

v.

RONALD ZIMMERMAN,
CONTINENTAL CASUALTY COMPANY (CNA),
ALIAS INSURANCE COMPANY NO. 2,
ALIAS INSURANCE COMPANY NO. 3,

Defendants,

STATE OF WISCONSIN DEPARTMENT OF JUSTICE/
CRIME VICTIM COMPENSATION PROGRAM,

Nominal-Defendant,

CINCINNATI INSURANCE COMPANY,

Intervenor-Defendant-Respondent.

APPEAL from an order of the circuit court for Sauk County:
JAMES EVENSON, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Vergeront, J.

PER CURIAM. Terina P.,¹ by her guardian ad litem, and David P., her father, appeal from an order dismissing Cincinnati Insurance Company as a defendant. The dispositive issue is whether insurance coverage is barred by a family exclusion clause. We conclude it is. We affirm.

The plaintiffs brought this action against Peggy Zimmerman, who is Terina's mother, and Ronald Zimmerman, Peggy's husband. They alleged Ronald Zimmerman sexually assaulted Terina, a minor, in the Zimmerman home over a two-year period. They sought damages from him for that conduct, and also from Peggy Zimmerman for negligently failing to protect Terina. Cincinnati Insurance provided liability coverage to the Zimmermans for part of the relevant time, and it intervened as a defendant. By motion for summary judgment, Cincinnati sought dismissal from the case on the ground the plaintiffs' claims were not covered under its policy. The trial court granted the motion. The plaintiffs appeal.

The facts relating to the coverage issue are not disputed. Cincinnati's policy does not cover bodily injury to "an insured within the meaning of part a. or b. of 'insured' as defined." The policy defines "insured" as "you and the following residents of your household:

- a. your spouse;
- b. your relatives;
- c. any person in the care of you or an insured spouse or relative."

The plaintiffs concede Terina is within part b. of the definition because she was a relative of the Zimmermans and a resident in their household. However, they argue Terina also is within part c. of the definition

¹ Because of the nature of the case, we do not use the plaintiffs' last names.

because she was a person in the care of the insureds, and therefore the family exclusion does not apply to her because it does not exclude part c.

Interpretation of an insurance contract is a question of law we review independently. *Tara N. v. Economy Fire & Casualty Ins. Co.*, 197 Wis.2d 77, 84, 540 N.W.2d 26, 29 (Ct. App. 1995). An exclusionary clause in an insurance contract is strictly construed against the insurer, but must also be interpreted to mean what a reasonable person in the position of the insured would have understood the words of the contract to mean. *Id.* at 90-91, 540 N.W.2d at 32.

We conclude reasonable insureds would understand the policy to exclude injuries to all relatives who are residents of their household, regardless of whether they might also be "in the care" of the insured. The policy unambiguously excludes persons described in parts a. and b. of the definition of "insured," that is, a spouse and relatives. It is immaterial that such persons might also be "in the care" of the insured, as described in part c. The result of the plaintiffs' argument would be that only relatives who are not in the care of the insured would be excluded. If this was the intent, the policy could have said so in much plainer terms.

Therefore, we conclude Terina's claims against the Zimmermans are not covered by Cincinnati's policy. In a letter filed after briefing, the plaintiffs concede that if Terina's claims are not covered, neither are her father's derivative claims. *See id.* at 89, 540 N.W.2d at 31 (a derivative claim, although separate, depends on whether the party actually injured sustained a compensable injury).

By the Court. — Order affirmed.

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