

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 21, 1998

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. 98-0877-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

SHAYNE MARKEE,

PLAINTIFF-APPELLANT,

V.

FORD MOTOR COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Polk County:
JAMES R. ERICKSON, Judge. *Affirmed.*

CANE, P.J. Shayne Markee appeals from a judgment dismissing her small claims complaint seeking relief under Wisconsin's Lemon Law, § 218.015, STATS.¹ She contends the trial court erred when, following a non-jury trial, it concluded that she was not entitled to relief under Wisconsin's Lemon Law

¹ This is an expedited appeal under RULE 809.17, STATS.

because the alleged oil leak problem was first reported to the dealer more than one year after the car was first delivered to the original owner. The trial court also concluded that even if the one-year period ran from the time of her purchase, she was not entitled to relief because the oil leak did not substantially impair the use, value or safety of the car; the car was presented for repair only once during the one-year period; and was not out of service for at least thirty days. Because Wisconsin's Lemon Law creates remedies for defects to new motor vehicles for a period of one year from the time of its first delivery, the judgment is affirmed.

The facts are undisputed. The motor vehicle is a 1990 Ford Tempo originally sold and delivered to its first owner on May 23, 1990. The vehicle carried a twelve-month/12,000-mile bumper-to-bumper warranty.² After the first owner died, the dealer reacquired the Tempo and sold it to Markee on December 18, 1990, as a used car with 8,000 to 9,000 miles on it. Markee first took the Tempo to the dealer for repair of an oil leak on August 21, 1991, and subsequently returned it to the dealer for repair of oil leaks on three occasions: December 1992, December 1993 and February 1994. By December 1997, the Tempo had been driven more than 105,000 miles.

Markee contends the trial court incorrectly interpreted the Lemon Law. The trial court's decision on an issue of statutory interpretation is reviewed *do novo*. *State ex rel. Frederick v. McCaughtry*, 173 Wis.2d 222, 225-26, 496

² Markee argues that the Tempo was also covered by a six-year/60,000 mile drive-train warranty and that is the warranty we should be referencing. Ford Motor Company responds by contending that the correct warranty is the twelve-month/12,000 miles as the "expressed warranty" referred to in the Lemon Law. Additionally, Ford contends the longer drive-train warranty would not have required it to repair an oil leak. It is unnecessary to resolve this dispute because this court's holding is that the Tempo had to be presented for repair within one year of the original purchase or within the express warranty, whichever occurred sooner. Here, regardless of which warranty is applied, the one-year period would apply.

N.W.2d 177, 179 (Ct. App. 1992). The objective in interpreting statutory language is to identify and give effect to the intent of the legislature. *See Stockbridge Sch. Dist. v. DPI Sch. Dist. Boundary Appeal Bd.*, 202 Wis.2d 214, 219, 550 N.W.2d 96, 98 (1996). In an attempt to construe the legislature's intent, we first consider the plain language of the statute. *See id.* at 220, 550 N.W.2d at 98-99 (quoting *Jungbluth v. Hometown, Inc.*, 201 Wis.2d 320, 327, 548 N.W.2d 519, 522 (1996)). If the meaning of the statutory language is clear, we will not look outside the language of the statute to ascertain legislative intent. *See Ball v. Dist. No. 4 Area Bd. of VT&AE*, 117 Wis.2d 529, 537-38, 345 N.W.2d 389, 394 (1984).

A statute is not rendered ambiguous merely because the parties disagree as to its meaning. *Lincoln Sav. Bank v. DOR*, 215 Wis.2d 430, 441-42 573 N.W.2d 522, 527 (1998). Nor is a statute rendered ambiguous if courts differ as to its meaning. *Id.* A statute is ambiguous when it is capable of being understood in two or more different senses by reasonably well-informed persons. *Id.* at 442, 573 N.W.2d at 527. Only if it is ambiguous do we look to its scope, history, context, subject matter and object to determine legislative intent. *Id.*

Markee argues that she is entitled to recover under the Lemon Law because the vehicle was purchased while still under warranty and the first repair attempt occurred within the first year after she took possession of the Tempo. This court is not persuaded.

The Wisconsin Lemon law applies to new motor vehicles for a period of one year or the length of the vehicle's warranty, whichever is sooner.

Section 218.015(2)(a), STATS.³ Under the Lemon Law, a vehicle is considered a "lemon" if it has a defect which substantially impairs the use, value or safety of a motor vehicle, and it is out of service for thirty days or subject to repair four times for the same defect. Section 218.015(1)(f) and (h), STATS. If a reasonable attempt to repair the defect is unsuccessful, a non-lessee consumer gets his or her choice of a new vehicle or a refund. Section 218.015(2)(b), STATS.

Section 218.015(2)(a), STATS., states that if a new motor vehicle does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motor vehicle lessor or any of the manufacturer's authorized motor vehicle dealers and makes the vehicle available for repair before the expiration of the warranty or within one year after first delivery of the motor vehicle to a consumer, whichever is sooner, the nonconformity shall be repaired. This subsection "protects the consumer from those instances in which the consumer is unable to establish the 'reasonable attempt to repair' necessary under sec. 218.015(2)(b) ... but can show that the dealer has not, cannot, or will not repair a nonconformity brought to its attention during the warranty period." *Vultaggio v. GMC*, 145 Wis.2d 874, 891, 429 N.W.2d 93, 99 (Ct. App. 1988).

³ Section 218.015(2)(a), STATS., provides:

If a new motor vehicle does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motor vehicle lessor or any of the manufacturer's authorized motor vehicle dealers and makes the motor vehicle available for repair before the expiration of the warranty or one year after first delivery of the motor vehicle to a consumer, whichever is sooner, the nonconformity shall be repaired.

There is no dispute that Markee is a consumer under the Lemon Law since she purchased the vehicle while the warranty still existed.⁴ However, it is also undisputed that the Tempo was delivered to the first purchaser on May 23, 1990 and first taken to the dealer for repair of the oil leak on August 21, 1991, approximately fifteen months after it had been initially delivered to the original owner.

The relevant Lemon Law language is unambiguous. It requires that the vehicle be presented for repair either during the term of the express warranty or within one year after its first delivery to a consumer, *whichever is sooner*. Here, the trial court properly concluded that Markee failed to establish that she had presented the Tempo for any repair within one year after first delivery of the motor vehicle to a consumer. The trial court also properly rejected Markee's contention that she had one year from the time of her purchase to present the vehicle for repair. As the trial court concluded, the one-year period is triggered by the first delivery to any consumer, which in this case was the original purchaser on May 23, 1990. Were this court to adopt Markee's argument, the dealer's obligation to repair under the Lemon Law would be extended for a year each time the vehicle is repurchased as long as it was purchased within the warranty period. Contrary to Markee's contention, the Lemon Law applies to a motor vehicle for the period of

⁴ Section 218.015(1)(b)2, STATS., provides:

(1) In this section:

....

(b) "Consumer" means any of the following:

....

2. A person to whom the motor vehicle is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motor vehicle.

only one year after its first delivery to a consumer or of the length of the vehicle's warranty, whichever is sooner.

Because the undisputed facts show that the Tempo had not been presented for repair within one year of its first delivery, the Lemon Law does not apply. As this issue is dispositive of the case, it is not necessary to address the trial court's additional reasons for dismissing the complaint. The judgment dismissing the small claims complaint seeking relief under Wisconsin's Lemon Law is therefore affirmed.

By the Court.—Judgment affirmed.

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

