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DISTRICT II

October 1, 2025

To:

Hon. George A. Limbeck
Circuit Court Judge
Electronic Notice

Justin F. Wallace
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Sarah A. Zylstra
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP2247

Lacey Stirdivant v. American Family Life Insurance Company
(L.C. #2023CV71)

Before Neubauer, P.J., Grogan, and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Lacey Stirdivant (“Stirdivant”) appeals from an order dismissing her action against American Family Life Insurance Company (“American Family”). She had sought to recover death benefits from a policy that her late husband had applied for prior to his untimely passing. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

On November 22, 2022, Stirdivant's husband, Joshua, applied for a life insurance policy from American Family. The application indicates that Joshua was given a "Conditional Receipt or Temporary Life Insurance Agreement" and made a payment of \$175.78. It also includes the following language to which Joshua agreed:

I understand that *except as provided in the Conditional Receipt* or Temporary Life Insurance Agreement, the insurance applied for will be effective only after:

- a. the policy is accepted by the Proposed Owner; and
- b. the first premium is paid in full, according to its terms, and during the lifetime of the Proposed Insured(s) to be covered; and
- c. any required amendments have been signed and returned to the Home Office.

(Emphasis added.)

Joshua received and signed the Conditional Receipt referenced above. The Conditional Receipt explains that no coverage would become effective until certain conditions were met, including a required medical exam. It states in relevant part:

NOTICE TO PROPOSED INSURED(S) AND OWNER. No coverage will become effective prior to delivery of the policy applied for unless and until all terms and conditions of this Conditional Receipt (Receipt) are met for All Proposed Insureds listed on the Application If such terms and conditions are not met, American Family Life Insurance Company's (the Company's) only liability is to return the Payment Amount to the Proposed Owner.

...

**CONDITIONS WHICH MUST BE MET BEFORE
COVERAGE MAY BECOME EFFECTIVE PRIOR TO
DELIVERY OF THE POLICY:**

1. *All medical exams* (physical exams, blood and other lab tests, x-rays, etc.) required by the Company must be completed to the Company's satisfaction within 120 days of Today's Date.

...

3. On the Effective date below, the Proposed Insured(s) must qualify under the Company's rules and practices for the coverage(s) applied for at the Company's standard rates.

...

EFFECTIVE DATE. If all of the above conditions are met, then insurance, subject to the conditions and provisions of the policy applied for, will become effective *on the latest of: the date the Application is completed; the date the last required medical exam ... is completed [...]*.

(Italicized emphasis added.)

Joshua was scheduled to complete the required medical exam on December 20, 2022; however, he had to cancel due to a work commitment. Five days later, before he was able to complete the required exam, Joshua unexpectedly suffered a cardiac arrest and passed away.

After Joshua passed away, American Family refused to pay death benefits to Stirdivant, who was the primary beneficiary listed in Joshua's application. Instead, it returned Joshua's \$175.78 payment.

Stirdivant subsequently filed this action against American Family alleging breach of contract, bad faith, and failure to make a timely payment of an insurance claim as required by WIS. STAT. § 628.46. American Family, in turn, filed a motion to dismiss.

Following briefing and a hearing on the matter, the circuit court granted American Family's motion to dismiss. The court concluded that there was no insurance contract in effect at the time of Joshua's passing due to his failure to complete the required medical exam. Stirdivant now appeals.

On appeal, Stirdivant contends that the circuit court erred in dismissing her action against American Family. Whether a motion to dismiss was properly granted is a question of law that we review de novo. *See Greenwald Fam. Ltd. P'ship v. Village of Mukwonago*, 2023 WI 53, ¶13, 408 Wis. 2d 143, 991 N.W.2d 356.

Here, we are satisfied that the circuit court properly granted American Family's motion to dismiss. As noted, the language in the Conditional Receipt makes clear that no coverage would become effective until certain conditions were met, including a required medical exam. Because that required exam was never completed,² there was no coverage in effect at the time of Joshua's passing and therefore no basis for Stirdivant to recover death benefits from American Family. Per the Conditional Receipt, American Family's only liability was to return Joshua's \$175.78 payment, which it did.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

² Stirdivant notes that Joshua had "120 days" to complete the required medical exam and suggests that he had temporary coverage during that time. Again, the full text of the Conditional Receipt makes clear that no coverage would become effective until certain conditions were met, including the required exam. Such a condition precedent to coverage is common in insurance policies and has been upheld by numerous courts. *See, e.g., Fox v. Catholic Knights Ins. Soc.*, 2003 WI 87, ¶¶36-37, 263 Wis. 2d 207, 665 N.W.2d 181 (collecting cases).

